(30,626)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 661

PENNSYLVANIA RAILROAD SYSTEM AND ALLIED LINES FEDERATION NO. 90, EXECUTIVE COUNCIL OF PENNSYLVANIA RAILROAD SYSTEM AND ALLIED LINES FEDERATION NO. 90, ET AL., APPELLANTS,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, SAMUEL REA, W. W. ATTERBURY, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

District Court of the United States

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 2875. September Term, 1923.

Pennsylvania Railroad System and Allied Lines Federation No. 90, Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90, N. Plummer Good, etc., H. A. Bixler, etc., Charles Kutz, Walter P. Weller, Raymond J. Dorson, Arthur C. Myer, George W Woomer and Alfred J. Burger, etc., Rome La Fontain, Henry Rothermell, George Cramer, Jacob Kern and F. M. Keech	David Wallerstein, Morris Hillquit.
v.	
Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, Elisha Lee, George L. Keck, E. T. Whiter, C. S. Krick, M. W. Clement, T. B. Hamilton, Benjamin McKeen, I. W. Geer, P. F. Smith, Jr., T. H. Davis, W. J. Hilton, Charles Mode, J. E. Cavey and C. G. Larson.	John Hampton Barnes.

DOCKET ENTRIES.

Nov. 2, 1923.	Bill of Complaint filed.
" 2, "	Subpœna exit—returnable November 22, 1923.
" 26, "	Subpœna returned: On November 2—service accepted as to Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, George L. Peck, C. S. Krick,—as to other defendants—Not found in District"—and filed.
Dec. 14, 1923.	Answer filed.
Jan. 3, 1924.	Præcipe to place case on Trial List, filed.
" 7, "	Præcipe to withdraw order to place case on Trial List, filed.
" 12, "	Præcipe to place case on Trial List, filed.
" 28, "	Argued sur Motion to Dismiss Bill of Complaint and sur Pleadings and Proofs.
" 29, "	Hearing resumed.
Feb. 4, 1924.	Appearance of John Hampton Barnes, Esq., for defendants, filed.
" 5, "	Opinion, Dickinson J., dismissing Bill of Complaint, filed.
" 6, "	Testimony filed.
" 6, "	Complainants' Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, filed.
" 8, "	Decree dismissing Bill of Complaint, filed.
" 9, "	Assignments of Error filed.
" 9, "	Petition for Appeal, filed.
" 9, "	Decree granting prayer of petition, filed.

"	9, "	Copy of Notice of Appeal, filed.
"	9, "	Bond sur Appeal in $200., with Fidelity & Deposit Co., of Maryland, surety, filed.
"	9, "	Decree approving bond sur appeal, filed.
"	9, "	Citation allowed and issued.
"	9, "	Præcipe as to transcript of record sur appeal, filed.
"	"	Citation returned "service accepted" and filed.

IN THE
DISTRICT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF PENNSYLVANIA.

BILL IN EQUITY.

PENNSYLVANIA RAILROAD SYSTEM AND ALLIED LINES FEDERATION No. 90, EXECUTIVE COUNCIL OF PENNSYLVANIA RAILROAD SYSTEM AND ALLIED LINES FEDERATION No. 90, and N. PLUMMER GOOD, individually and as President of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council thereof, H. A. BIXLER, individually and as Secretary-Treasurer of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council thereof, CHARLES KUTZ, WALTER P. WELLER, RAYMOND J. DORSON, ARTHUR C. MYER, GEORGE W. WOOMER and ALFRED J. BURGER, individually and as members of the Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90, ROME LA FONTAIN, HENRY ROTHERMILL, GEORGE CRAMER, JACOB KERN and F. M. KEECH,

Complainants.

against

THE PENNSYLVANIA RAILROAD COMPANY, SAMUEL REA, W. W. ATTERBURY, ELISHA LEE, GEORGE L. PECK, E. T. WHITER, C. S. KRICK, M. W. CLEMENT, T. B. HAMILTON, BENJAMIN McKEEN, I. W. GEER, P. F. SMITH, JR., T. H. DAVIS, W. J. HILTON, CHARLES MODE, J. E. CAVEY and C. G. LARSON,

Defendants.

BILL OF COMPLAINT.
(Filed Nov. 2, 1923.)

1. Pennsylvania Railroad System and Allied Lines Federation No. 90, hereinafter for convenience called "System Federation No. 90", is a voluntary unincorporated association of employees of the Pennsylvania Railroad Company who were and are engaged in the State of Pennsylvania, New York, New Jersey, Delaware, Maryland, Ohio, Virginia, West Virginia, Indiana, Kentucky, Michigan and Illinois and in the District of Columbia in shop or mechanical work in and about the repair and maintenance of cars, locomotives and other equipment of the said Company. It brings this action in behalf of itself and also as the representatives and in behalf of all of its members, employees of the said Pennsylvania Railroad Company, who are too numerous to be brought into this suit as direct parties plaintiff and are citizens and residents of the States of Pennsylvania, New York, New Jersey, Delaware, Maryland, Virginia, West Virginia, Ohio, Kentucky, Indiana, Michigan and Illinois and of the District of Columbia.

The complainant N. Plummer Good, is a citizen and resident of the State of Pennsylvania and the President of System Federation No. 90; the complainant H. A. Bixler also is a citizen and resident of the State of Pennsylvania and the Secretary-Treasurer of the said System Federation; the complainant Charles Kutz is a citizen and resident of the State of Pennsylvania; the complainant Walter P. Weller is a citizen and resident of the State of Pennsylvania; the complainant Raymond J. Dorson is a citizen and resident of the State of New York; the complainant Arthur C. Myer is a citizen and resident of the State of Ohio;

the complainant George W. Woomer is a citizen and resident of the State of Pennsylvania; the complainant Alfred J. Burger is a citizen and resident of the State of Pennsylvania. The said complainants and N. Plummer Good, H. A. Bixler, Charles Kutz, Walter P. Weller, Raymond J. Dorson, Arthur C. Myer, George W. Woomer and Alfred J. Burger constitute the Executive Council of System Federation No. 90 and are members of the said Council; they sue herein as such officers of System Federation No. 90 and members of the Executive Council of the same and individually in behalf of themselves and all other employees of the said company similarly situated.

The complainants Rome La Fontain, Henry Rothermell, George Cramer and Jacob Kern are members of System Federation No. 90 and employees of the Pennsylvania Railroad Company engaged in shop or mechanical work in and about the repair and maintenance of cars, locomotives and other equipment of the said company; they sue herein in their own behalf and all and each of them also sue in behalf of all other employees of the said company similarly situated. The complainant F. M. Keech is an employee of the Pennsylvania Railroad Company engaged in shop or mechanical work in and about the repair and maintenance of cars, locomotives and other equipment of the said company and is not a member of System Federation No. 90; he sues herein in his own behalf and in behalf of all other employees of the said company similarly situated.

2. The defendant The Pennsylvania Railroad Company is a corporation organized and existing under the laws of the State of Pennsylvania, and together and in connection with its subsidiaries and affiliated lines operates a system of railroads in the States

of Pennsylvania, New York, New Jersey, Delaware, Maryland, Ohio, Virginia, West Virginia, Indiana, Kentucky, Michigan and Illinois and in the District of Columbia, constituting what is commonly known and designated as the "Pennsylvania System." The Pennsylvania Railroad Company maintains its principal office in the City of Philadelphia, State of Pennsylvania, in the Eastern District thereof, and at all times mentioned in this bill of complaint, was and now is engaged in the transportation of passengers and freight, both intrastate and interstate, and is subject to the provisions of the Act of Congress approved by the President of the United States on the 28th day of February, 1920, which said Act is known as the "Transportation Act" and for convenience and brevity will hereafter be so designated herein.

The defendant Samuel Rea is the President of the Pennsylvania Railroad Company and is a citizen and resident of the Eastern District of Pennsylvania.

The defendant W. W. Atterbury is the Vice-President in Charge of Operation of the Pennsylvania Railroad Company, and is a resident and citizen of the Eastern District of Pennsylvania.

The defendant George L. Peck is the Vice-President in Charge of Personnel of the Pennsylvania Railroad Company, and is a citizen and resident of the Eastern District of Pennsylvania.

The defendant Elisha Lee at all times mentioned in this Bill was Vice-President of the Eastern Region of the Pennsylvania Railroad Company, and is a citizen and resident of the Eastern District of Pennsylvania.

The defendant C. S. Krick is the General Manager of the said Eastern Region, and a citizen and resident of the Eastern District of Pennsylvania.

The defendant E. T. Whiter is Vice-President of the Northwestern Region of the Pennsylvania Railroad Company, and is a resident of the State of Illinois.

The defendant M. W. Clement is General Manager of the Central Region of the said Pennsylvania Railroad Company, and is a citizen and resident of the State of Pennsylvania.

The defendant T. B. Hamilton is General Manager of the Northwestern Region of the said Pennsylvania Railroad Company, and is a citizen and resident of the State of Illinois.

The defendant Benjamin McKeen is Vice-President of the Southwestern Region of the Pennsylvania Railroad Company, and is a citizen and resident of the State of Missouri.

The defendant I. W. Geer is General Manager of the Southwestern Region of the Pennsylvania Railroad Company, and is a citizen and resident of the State of Missouri.

The defendant P. F. Smith, Jr., is Manager of the Altoona Works of the Pennsylvania Railroad Company at Altoona, Pennsylvania, and is a citizen and resident of the State of Pennsylvania.

The defendant T. H. Davis is a citizen and resident of the State of New Jersey;

The defendant W. J. Hilton is a citizen and resident of the State of Pennsylvania;

The defendant Charles Mode is a citizen and resident of the State of Indiana;

The defendant J. E. Cavey is a citizen and resident of the State of Ohio;

The defendant C. G. Larson is a citizen and resident of the State of Pennsylvania.

The five defendants last above named are employees of the Pennsylvania Railroad Company, en-

gaged in shop or mechanical work in and about the repair and maintenance of cars, locomotives and other equipment of the said company, who hold themselves out as officers and representatives of alleged organizations of employees in such shop or mechanical work, and assume to act in their behalf under the provisions of the Transportation Act.

3. The subject matter presented by this suit involves questions arising under the laws of the United States and particularly the Transportation Act above mentioned, and Section 19 of Title III of the Criminal Code of the United States; the amount involved herein is in excess of $3,000, exclusive of interest. The action is of a civil nature and involves the duty of railroad companies and other carriers to confer in good faith with their employees through authorized representatives designated by the latter on all questions and disputes arising between them with respect to wages, rules and working conditions, and the right of such employees to present their side of such questions or disputes and to have the same considered by the carriers; the right of employees of railroad companies to organize into trade or labor unions and to be represented by such unions in conferences with the officers of railroad companies and carriers; the right of employees of railroad companies to submit such disputes involving grievances, rules or working conditions not decided in conference between them and the officers of the employing carriers, to the United States Railroad Labor Board (hereafter for convenience referred to as Railroad Labor Board) for consideration and decision; the right of such employees to be represented in such proceedings before the said Railroad Labor Board by organizations of their own choice and to avail themselves

of all facilities of such organizations for the presentation of their grievances and in support of rules or working conditions advocated or requested by them; the duty of railroad companies to submit such disputes with employes involving grievances, rules or working conditions as have not been decided in conference between them and their employees, to the Railroad Labor Board for consideration and decision; the right of employees on railroads to elect their own representatives for the purposes of securing the benefits of the Transportation Act by proper methods voluntarily adopted by them to that end and free from influence and interference on the part of the employing carrier; the power of the Railroad Labor Board to make rules and regulations for the efficient execution of the functions vested in it by the Transportation Act and the binding character of such rules and regulations upon carriers and their employees; the right and power of the said Board to prescribe rules and regulations governing the methods of negotiations and agreements between carriers and their employees respecting the rules and working conditions; the power of the courts of the United States to enforce the provisions of the Transportation Act, and particularly the provisions of Section 301 thereof directing carriers and their employees to exert every reasonable effort to avoid interruption in the operation of railroads, to consider all disputes between them and to submit such questions as they are unable to decide in conference between themselves, to the Railroad Labor Board; the liability of railroad companies and their officials and other persons for depriving railroad employees, citizens of the United States, of the enjoyment of the rights and privileges secured to them by the Transportation Act, by agreement and concerted action among themselves.

4. The respective rights and duties of carriers and their employees, and the authority and duties of the Railroad Labor Board are declared and fixed by Title III of the Transportation Act, which concerns "Disputes between carriers and their employees and subordinate officials."

Section 301 of the Transportation Act makes it the duty of carriers and their employees to exert every reasonable effort and to adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and its employees. To that end, it directs in mandatory terms that all such disputes shall be considered in conference between the parties, and that any dispute involving grievances, rules or working conditions not decided in such conference, shall be heard and decided by the Railroad Labor Board. Action of the Board may be taken on its own motion or may be invoked by the Chief Executive of the carrier, or an "organization of the employees." It authorizes the Board to make regulations necessary for the efficient execution of the functions vested in it by the Act.

Section 302 of the Transportation Act provides for the establishment of Railroad Boards of Adjustment by agreement between the carrier and the employees, "or organizations or groups of organizations thereof," and Section 303 delegates the hearing of grievances to such Railroad Board of Labor Adjustments. Section 307 provides that when an appropriate Railroad Labor Adjustment Board has not been organized as above provided, its functions revert to the Railroad Labor Board.

5. The complainants aver that no Railroad Labor Adjustment Board has ever been established by agreement between the Pennsylvania Railroad Company, its

employees or organizations or group of employees, or between any group of carriers or employees including the said Pennsylvania Railroad Company and its employees.

6. Prior to December 8, 1917, the System of railroads known as the "Pennsylvania System" was operated by the defendant Pennsylvania Railroad Company. The Company employed a large number of workers in shop or mechanical work in and about the repair and maintenance of its locomotives, cars and other equipment. Such employees consisted of machinists, blacksmiths, electrical workers, sheet metal workers, boiler makers and carmen, the total number of whom at times was about 70,000.

There were prior to the date last above mentioned, and at all times thereafter, trade or labor unions within each of the crafts above enumerated organized and operating on national scale. Such organizations were The International Association of Machinists, The International Brotherhood of Blacksmiths, Dropforgers and Helpers, International Alliance of Amalgamated Sheet Metal Workers, The International Brotherhood of Boilermakers, The International Brotherhood of Electrical Workers and the Brotherhood Railway Carmen of America. All of the said organizations were bona fide labor unions organized for the purpose of bettering the material conditions of their members, securing for them living wages and reasonable hours of labor, establishing fair methods for the adjustment of grievances between employers and employees in the industries in which their members were engaged and gnerally improving the conditions and standards of life and work of their members. The said organizations were and are affiliated with the American Federation

of Labor and constitute part of the Railway Employees Department of the same.

7. Prior to the 28th day of December, 1917, the said organizations represented a combined membership upwards of 300,000, and a large number of these were employed on the different railroads of the country, including the Pennsylvania Railroad Company. The members of the said organizations so employed on the different railroads were organized in separate local unions or "lodges" according to their respective residences and places of employment. Members of the said organizations employed by the Pennsylvania Railroad Company, operated and maintained such local unions or lodges in the cities of Chicago, Fort Wayne, Logansport, Terra Haute, Indianapolis, Columbus, Cincinnati, Cleveland, Toledo, Pittsburgh, Harrisburgh, Philadelphia, Baltimore, Hagerstown, Wilmington, Delmar, Camden, Trenton, Jersey City, New York, Buffalo, Olean, Elmira and other cities. It was, however, the policy of the Pennsylvania Railroad Company to discourage trade union membership among its employees in the shop or mechanical departments; the said Company refused to recognize such trade unions, to deal with them as representatives of their members employed by it, to discuss with them terms of such employment or to enter into collective agreements with them for the regulation of such terms of employment, although it did recognize the organizations of its employees engaged in the train service, *i. e.*, The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Order of Railway Conductors and the Brotherhood of Railway Trainmen, and operated under collective agreements with such organizations as far as its employees in the train service were concerned.

With respect to employees engaged in shop or mechanical work, their terms of employment were fixed by the Pennsylvania Railroad Company without consultation with the employees or their organizations, and such terms of employment were on the whole unfair and unsatisfactory to the employees; the system of "piecework" prevailed as the method of compensation, *i. e.*, employees were paid not on the basis of work time but on the basis of a fixed price for making, repairing, assembling or dissembling of specified parts of cars or locomotives or for specified mechanical processes; the said price system was arbitrary and made it difficult to determine whether the payment was adequate compensation for the time employed upon such work; there was no proper classification of employees as a basis for just, fair and uniform compensation, nor were there any seniority rights among such employees. The wages paid to such employees as a rule were low, the hours of labor unregulated and there was general dissatisfaction with the conditions of work among the said shop and mechanical workers of the defendant Company.

8. On December 28, 1917, the President of the United States, by authority of the Act of Congress of August 29, 1916, took over the railroads of the United States including those theretofore operated by the Pennsylvania Railroad Company, and operated them through the United States Railroad Administration and the Director General of Railroads. When Federal control of the railroads was thus established, discrimination against employees in the shop or mechanical departments of the railroads, including the Pennsylvania Railroad System, was discontinued, and on the 21st day of February, 1918, the United States Railroad Ad-

ministration issued an order known as General Order No. 8, which, among other things, declared that "No discrimination will be made in the employment, retention, or conditions of employment of employees because of membership or non-membership in labor organizations. Owing to the said policy of the United States Railroad Administration, and following upon the promulgation of General Order No. 8, the local unions and lodges of the national organizations of mechanical and shop craft employees of the Pennsylvania Railroad above mentioned, began functioning more openly and actively, and a very large proportion of the Company's employees engaged in mechanical and shop work became members of the said organizations. On or about the 1st day of July, 1918, the number of such local unions or lodges, whose members were employed in the different mechanical or shop crafts on the Pennsylvania Railroad System, had risen to upward of 170 representing a combined membership of about 30,000, *i. e.*, a little less than one-half of the total number of such employees on the said road.

9. On the 8th day of July, 1918, a convention was held in the City of Altoona, State of Pennsylvania, which was attended by 171 delegates representing an equal number of local unions or lodges of the International Association of Machinists, the International Brotherhood of Blacksmiths, Dropforgers and Helpers, The International Alliance of Amalgamated Sheet Metal Workers, The International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, The International Brotherhood of Electrical Workers and the Brotherhood Railway Carmen of America. The convention remained in session until July 11, 1918, and resulted in the organizations of the Pennsylvania Railroad System and Allied Lines Federation No. 90,

one of the complainants herein. The said System Federation No. 90 is a union or confederation of six craft organizations, *i. e.*, machinists, boilermakers, blacksmiths, sheet metal workers, electrical workers and railway carmen each of such craft organizations representing all local unions or lodges of the employees of the Pennsylvania Railroad Company employed in their said respective crafts. The object of System Federation No. 90 as set forth in the preamble and platform adopted at the said convention is as follows:

"PREAMBLE

To bring within its folds all trades in the Mechanical Section of Railway Employees Department within its jurisdicton. We have been taught by experience that unity of action is imperative and absolutely essential for the success of the Railroad Trades. To prevent strikes of one organization at a time and by concerted action all shall reap the full benefit of their labor. To cherish, protect and promulgate our interests and rights as workers: To maintain the eight (8) hour work day and the minimum rate of wages, the abolition of physical examination and personal record and discrimination against railroad employees, and such other matters as concern the welfare of all.

We recognize twelve questions of general character, viz.:

PLATFORM

1. A minimum rate of wages per hour, for all employees including Gang Foremen, Assistant Foremen and Foremen.

2. To shorten the hours of labor to forty-four (44) hours per week, five days of eight hours and four hours Saturday.

3. Rate of pay for overtime, Sundays and Holidays included.

4. Method of handling grievances.

5. Provisions to be made for old employees.

6. Abolition of relay or lap system.
7. Abolition of age limit.
8. Regulation of apprentices.
9. That no physical examination be required of applicants for employment.
10. Applicants for employment will only be required to give name and address of relatives.
11. That we go on record as forever favoring the day work system.
12. That we go on record as pledging ourselves to perpetuate the National Agreement as we believe this will mean a more permanent and stable condition acceptable to employees and employer and general public alike. The operation of railways coming more and more under supervision of the Government; the standardization of freight and passenger rates makes for the standardization of pay for employees on all roads, hence the necessity of a National Agreement.

To these twelve questions we pledge our earnest cooperation."

10. System Federation No. 90 adopted a constitution and by-laws which, among other things, provided and provides that the officers of the said Federation shall consist of a President and Secretary-Treasurer, and that the System Federation shall have an Executive Council consisting of the President and Secretary-Treasurer and a General Chairman of each of the six affiliated crafts. The complainant Charles Kutz is such General Chairman of the organization in the craft of machinists employed on the Pennsylvania Railroad System; the complainant Walter P. Weller is the General Chairman of the organizations of such employees in the craft of boilermakers; the complainant Raymond J. Dorson is the General Chairman of such employees in the blacksmith craft; the complainant Arthur C. Myer is the General Chairman of such employees in the sheet metal workers craft; the complainant George W.

Woomer is the General Chairman of the organization of such employees in the craft of electrical workers; the complainant Alfred J. Burger is the General Chairman of the organization of such employees in the railway carmen's craft, and together with the complainants N. Plummer Good, president of Federation System No. 90, and H. A. Bixler, Secretary-Treasurer, they constitute the said Executive Council. The constitution and by-laws of System Federation No. 90 also provided and provide that no employees in any craft should go on strike without the sanction of the System Federation Advisory Board composed of three representatives from each craft organization, under penalty of forfeiting the support of the said System Federation, and also that the said Advisory Board shall have the power to call a strike of all affiliated crafts only after all means to adjust the dispute have been exhausted and have failed, and only on securing the affirmative vote of the majority of all members, and the sanction of all national labor organizations above mentioned with which such crafts are affiliated and the sanction of the Railway Employees Department of the American Federation of Labor.

11. For the purpose of maintaining the organization of Federation System No. 90 and enabling the system and its officers to properly perform their functions and duties with respect to the members of the said organization, the members of said System Federation No. 90 obligated themselves to pay, and did pay to said System Federation No. 90, five cents (5c) per month for each member as a per capita tax or dues and System Federation No. 90 accumulated a substantial sum of money from such contributions.

12. In the beginning of the year 1921, System

Federation No. 90 had a total membership exceeding 60,000, which represented almost 90% of the total number of employees on the Pennsylvania Railroad System employed in shop or mechanical work. It was the recognized representative of the said employees and conducted their business through officers chosen by such employees in the manner provided in its constitution and by-laws. As such representative and authorized spokesman of its members, System Federation No. 90, through its Executive Council, ever since the organization of the said System and until its right thereto was unlawfully denied by the Pennsylvania Railroad Company as hereinafter set forth, negotiated for and in behalf of its members with the United States Railroad Administration, the Pennsylvania Railroad Company and the Railroad Labor Board all questions pertaining to wages, rules and conditions of work of the employees on the said Pennsylvania Railroad System engaged in shop or mechanical work, appeared before such Board and the Executive Officers of the said Company for and in behalf of such employees, presented arguments in support of the requests or views of such employees on all such questions and submitted facts, data and briefs in support thereof. As the questions involved in such controversies frequently were and are of an intricate nature requiring detailed study and expert knowledge, System Federation No. 90, out of the funds derived by it from the per capita taxes paid by its members, maintained a staff of officers and employees and investigators and from time to time engaged statisticians and counsel. The Executive Council of System Federation No. 90, and the members thereof and other officers, representatives and employees of the said System Federation No. 90, thus acquired a large experience in the handling of disputes

between such employees on the Pennsylvania Railroad System and other carriers, and accumulated a large volume of precise data bearing upon all points of such controversies, all of which was of great value to the members of the said System and all employees of the Pennsylvania Railroad Company engaged in shop or mechanical work. The existence, operations and functions of System Federation No. 90 had become indispensable to its members and the employees in the shop or mechanical crafts on the Pennsylvania Railroad System for the securing of just wages and working conditions for them.

13. Ever since the organization of System Federation No. 90, the said system and its Executive Council were, on all occasions, uniformly and consistently recognized as the authorized representative and spokesman for the members of the said system and the employees on the Pennsylvania Railroad System engaged in the shop and mechanical crafts by the United States Railroad Administration, by the Railroad Labor Board, and by the Pennsylvania Railroad Company until the month of May, 1921, when the said Company unlawfully refused to continue such recognition as hereafter set forth. During the said period numerous grievances were presented to the management of the Pennsylvania System under Federal administration by said System Federation No. 90 in behalf of the members and all employees of the Pennsylvania Railroad System, and grievances were adjusted between the said management and System Federation No. 90, as the representative of the employees.

14. At the time of the passage of the Transportation Act, System Federation No. 90 was a generally

recognized organization of employees within the meaning and intent of the said act, and was authorized by such employees to represent them for all purposes thereof.

15. On the 25th day of May, 1918, the United States Railroad Administration, after a careful and extensive study of the wages prevailing in the shop and mechanical crafts on the railroads of the United States, issued an order known as General Order No. 27, revising and increasing the prevailing rate of wages of such employees and fixing uniform rates of wages for them throughout the country.

On the 25th day of July, 1918, the said order was supplemented by the United States Railroad Administration by the issuance of an order entitled: "Supplement No. 4 to General Order No. 27," which established definite and uniform classifications of employees in the shop and mechanical crafts on the railroads in the United States under federal control.

In December, 1918, the said United States Railroad Administration, taking cognizance of the numerous complaints of the shop and mechanical employees on the railroads of the country against the prevailing "piece-work system" above described, ordered a vote to be taken among such employees on the subject of piece-work in order to secure an expression of their desires on the subject. About 98% of all such employees who voted on the question expressed their opposition to the piece-work system, which was thereupon discontinued by order of the United States Railroad Administration in the month of February, 1919.

Thereafter the United States Railroad Administration entered into an agreement in writing with the employees represented by the Railway Employees De-

partment of the American Federation of Labor and its affiliated organizations of the mechanical section, including System Federation No. 90, which said agreement will hereafter for convenience be referred to as the "National Agreement" which became effective on October 20, 1919, granted the employees a wage increase of 4 cents per hour and which continued in force the classification of employees in the shop and mechanical works on the railroads. It provided that eight hours shall constitute a day's work and that all employees shall be paid on the hourly basis. It further provided for a method of adjusting all grievances of employees by conferences and negotiations between representatives of the labor organizations in which such employees held membership, and the management of the railroads, and also provided that an employee who has been in the service of the railroad thirty days shall not be dismissed for incompetency or discharged for any cause without first being given an investigation; that if it was found that an employee had been unjustly discharged, he shall be reinstated with full pay for all time lost.

The National Agreement expressly recognized the right of labor organizations to represent their members in all dealings with the carrier and expressly stipulated that the carrier will not discriminate against any committeemen representing other employees and will grant them leave of absence and free transportation when delegated to represent other employees. The National Agreement also definitely established, recognized and defined the seniority rights of employees engaged in shop or mechanical work on the railroads including the Pennsylvania Railroad System. Such "seniority rights" were expressed therein as follows:

"Rule 18. When new jobs are created or

vacancies occur in the respective crafts the oldest employees in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them.

Rule 23. Employees who have given long and faithful service in the employ of the company and who have become unable to handle heavy work to advantage, will be given preference of such light work in their line as they are able to handle.

Rule 27. When it becomes necessary to reduce expenses, the force at any point or in any department or subdivision thereof shall be reduced, seniority as per rule 31 to govern; the men affected to take the rate of the job to which they are assigned.

Rule 29. When reducing forces, if men are needed at any other point they will be given preference to transfer to nearest point, with privilege of returning to home station when force is increased, such transfer to be made without expense to the company. Seniority to govern all cases.

Rule 31. Seniority of employees in each craft covered by this agreement shall be confined to the point employed in each of the following departments:

Maintenance of way (bridge and building, where separate from maintenance of way department).

Maintenance of equipment.

Maintenance of telegraph.

Maintenance of signals.

Four subdivisions of the carmen, as follows:

Pattern makers.

Upholsterers.

Painters.

Other carmen.

The seniority lists will be open to inspection and copy furnished the committee.

16. The National Agreement and the orders of the

United States Railroad Administration above referred to, were applied by the Pennsylvania Railroad System with respect to its employees in the shop and mechanical work from their respective dates, and were in full force and effect on the 28th day of February, 1920, the date when the Transportation Act became law, and remained in full force and effect after said date as hereinafter more fully set forth.

17. Owing to the very substantial increase in the cost of living at that time, the employees in the shop and mechanical work on the railroads, together with other classes of railway employees, on or about the 1st day of February, 1920, presented to the United States Railroad Administration, through the Director General of Railroads requests for wage increases. They also presented requests for certain modifications of the National Agreement looking to the improvements in working conditions. Such requests were presented in behalf of such employees by the recognized labor unions in their respective crafts including the Railway Employees Department of the American Federation of Labor and System Federation No. 90. The Director General declined to act upon such requests in view of the approaching termination of Federal control, but on the 13th day of February, 1920, the President of the United States in a communication addressed to a number of representatives of railroad workers' organizations, including the Chairman of the Railway Employees Department of the American Federation of Labor, of which System Federation No. 90 was a part, assured the said railway employees that the Administration would use its influence for the establishment of an appropriate legal machinery to pass upon the then pending requests of the railroad workers and to deal

with all questions and disputes between carriers and their employees in the future. The President of the United States thereafter, and in accordance with such assurance, transmitted certain messages to Congress requesting the establishment of such machinery. The said assurances were accepted by the railway workers, including the members of System Federation No. 90, and all employees of the Pennsylvania Railroad System engaged in shop or mechanical work, and they continued working under the then prevailing wages and conditions of work in reliance upon the promise that their requests would be considered as above set forth.

18. On the 23rd day of February, 1920, Congress passed the act, known as the "Transportation Act," which was signed by the President of the United States and became a law on February 28, 1920.

Under the terms of the said act, Federal control of the railroads terminated on March 1, 1920, and the President relinquished possession and control of all the railroads and systems of transportation then under Federal control, including the Pennsylvania Railroad System. By the said act, the railroads were returned to the ownership and operation as the same existed prior to Federal control and the Pennsylvania Railroad System was returned to the ownership and operation of the Pennsylvania Railroad Company. The said railroads were so returned under the terms of the Transportation Act which, among other things, guaranteed to the carriers certain net profit from operating income during the period of six months beginning March 1, 1920, and which in Title III thereof made provisions to prevent interruption of operation of railroads by reason of disputes between carriers and their employees.

Prior to Federal control there had been many actual and threatened interruptions of the railroad service in the United States due to conditions of unrest and dissatisfaction among the employees with the wages and working conditions, and the results of such interruptions were often disastrous to the industries and the welfare of the country and to the carriers as well as the employees. During the period of Federal control, the railroads operated without substantial interruptions largely because the United States Railroad Administration established just and satisfactory terms of employment and conditions of work and, above all, because it provided for methods of adjusting grievances of employees and disputes between carriers and their employees through channels of negotiations, conciliation and arbitration between the carriers and the employees allowing the latter to be represented in all such proceedings by their recognized organizations. It was to a large extent for the purpose of continuing the reforms thus introduced by the United States Railroad Administration during the period of Federal control in the operation of the railroads, and in the relations between carriers and employees, that Title III of Transportation Act was enacted by Congress. With that object in view, the said Transportation Act provided:

That it shall be the duty of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the em-

ployees or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board which under the provisions of this title is authorized to hear and decide such dispute.

That each Adjustment Board created under the provisions of the said Transportation Act, or, if such an Adjustment Board is not organized, the Railroad Labor Board shall, upon the application of an organization of employees, receive for hearing and with due diligence decide any dispute involving grievances, rules or working conditions on any railroad not adjusted between the parties. That each such Adjustment Board shall; (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute; (2) upon the written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute; (3) upon the Adjustment Board's own motion; or (4) upon the request of the Labor Board whenever such board is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing, and as soon as practicable and with due diligence decide any dispute involving only grievances, rules or working conditions, not decided as provided in Section 301, between the carrier and its employees or subordinate officials, who are, or any organization thereof which is, in accordance with the provisions of Section 302, represented upon any such Adjustment Board.

That the Labor Board shall hear, and as soon as practicable and with due diligence decide any disputes involving grievances, rules, or working conditions, in respect to which any Adjustment Board certifies to the Labor Board that in its opinion the Adjustment Board

has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof. In case the appropriate Adjustment Board is not organized under the provisions of Section 302, the Labor Board: (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute; (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute; or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules or working conditions which is not decided as provided in Section 301 and which such Adjustment Board would be required to receive for hearing and decision under the provisions of Section 303. And further, that upon the application of an organization of employees, the said Railroad Labor Board shall receive for hearing and decision all disputes with respect to the wages of employees not adjusted between the carrier and its employees.

19. As above set forth, there was at the time of the passage of the Transportation Act an application pending by the organizations of all classes of employees, including those engaged in shop and mechanical work on the Pennsylvania Railroad System and represented by System Federation No. 90, for an increase in wages. Such request for increase of wages had been denied by the carriers and the issue thus

created constituted a dispute between carriers and employees within the meaning of Section 301 of the Transportation Act, and the said Transportation Act was enacted with full knowledge of the pendency of the said dispute by Congress and with the intention to provide for a method of adjusting the same.

20. On the 28th day of February, 1920, and coincident with the signing of the Transportation Act, the President of the United States addressed a letter to the Executive Officers of the principal organizations of railroad workers in the United States, including B. M. Jewell, the Chairman of the Railway Employees Department of the American Federation of Labor, of which System Federation No. 90 was part, which said letter was published as a public document in the Congressional Record under date of March 1, 1920, and contained, among others, the following passages:

"Gentlemen: Your letter of the 14th instant and the subsequent arguments presented on your behalf with reference to the subject of pending claims for wage increases have had my careful consideration. The passage of the railroad bill by the House of Representatives on the 21st instant and by the Senate on the 23rd instant has made it evident that I could not act upon your suggestions until it should be determined whether the bill would become a law or not. It was manifest that if the bill should become a law the negotiation and consideration of the wage matter ought to proceed in harmony therewith.

The bill having now become law, the way is open for immediate action on the wage matter in accordance with the terms of the bill. Section 301 of the bill evidently contemplates that the carriers and employees should, as suggested by you, select representatives who will thus constitute a bipartisan board for the purpose of attempting by con-

ference to agree upon a solution of this wage problem. In accordance with the assurance I gave last August and repeated in substance in my letter of the 13th instant, I shall at once request the carriers and the employees to join in this action. I believe such a step will go far toward clarifying and maturing the subject for final disposition. In fact, the sort of board thus contemplated by Section 301 appears to be an appropriate substitute for the committee of experts which I have heretofore suggested, and indeed such a board will be authorized to go further than such a committee could have gone. * * *

My hopes are that the putting into effect of the provisions with a carefully selected labor board whose public representatives can be relied upon to be fair to labor and to appreciate the point of view of labor that it is not longer to be considered as a mere commodity will mark the beginning of a new era of better understanding between the railroad managements and their employees, and will furnish additional safeguards to the just interests of railroad labor.

I am sure that every agency which will be involved in the creation of the labor board and in the conduct of negotiations fully appreciates that the wage demands are entitled to the earliest possible consideration and disposition, and therefore I do not anticipate delay in the appointment and organization of the labor board or in the other necessary steps.

Sincerely yours,

WOODROW WILSON."

The Railroad Labor Board referred to in the foregoing letter of the President of the United States was created by Section 304 of the Transportation Act. The said Board under the terms of the Act is to be composed of nine members, three of them constituting the labor group, three constituting the management group,

and three the public group. The said Railroad Labor Board immediately after the passage of the Transportation Act was constituted by appointment by the President of the United States, by and with the advice and consent of the Senate, in the manner provided by the said Transportation Act. All of the members of the said Board so appointed qualified and entered upon the discharge of their duties and the said Railroad Labor Board has ever since functioned as such under the provisions of the Transportation Act. The Railroad Labor Board is, by the terms of the Transportation Act, directed to make decisions establishing rates of wages and standards of working conditions which in the opinion of the Board are just and reasonable taking into consideration, among other relevant circumstances:

> "(1) The scales of wages paid for similar kinds of work in other industries;
> (2) The relation between wages and the cost of living;
> (3) The hazards of the employment;
> (4) The training and skill required;
> (5) The degree of responsibility;
> (6) The character and regularity of the employment; and
> (7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments" (Section 307 [d]).

The Transportation Act further authorizes the Railroad Labor Board to make regulations necessary for the efficient execution of the functions vested in it by the said Act (Section 308, Subdivision [4]).

Under the provisions of the Transportation Act, the final decisions of the Labor Board with respect to wages and working conditions, cannot be enforced by process. The only sanction of such decisions in the

language of the Supreme Court of the United States is "the force of public opinion invoked by the fairness of a full hearing, the intrinsic justice of the conclusion, strengthened by the official prestige of the Board and the full publication of the violation of such decision by any party to the proceeding." But while such final decisions of the Board are not enforceable by process, all steps leading up to such decisions under the Transportation Act are, by the terms of the said Act, made mandatory and binding and the Railroad Labor Board is given authority by the said Act to force the submission of disputes to it, to compel hearings on such disputes and in connection therewith require by subpœna the attendance of any witness and the production of any book, paper or document or other evidence from any place in the United States.

The duties of carriers and employees in good faith to confer with each other on all disputes on the subject of wages and working conditions is also made mandatory upon both sides by the provisions of the said Transportation Act.

21. Immediately upon the appointment of the Railroad Labor Board, the representative of the organizations of employees, including the Railway way Employees Department of the American Federation of Labor of which System Federation No. 90 was part, duly made application to the Railroad Labor Board for a decision on the dispute as to wages and working conditions which was then pending as aforesaid. Upon such application hearings were had before the Railroad Labor Board in which both the carriers and the said organizations of employees participated, and such hearing resulted in a decision rendered by the Railroad Labor Board on the 20th day of July,

1920, known as "Decision No. 2." The said decision, among other things, contains the following recitals and findings of fact:

"From August, 1914 to December, 1917, the wages of railroad employees remained substantially unaltered. By December, 1917, the social and industrial changes which accompanied the World War had thrown such wages seriously out of line with those in other industries and with the cost of living. A short time prior to Federal control, organizations of railroad employees presented to the managements requests for substantial increases. The Director General on January 10, 1918, appointed the 'Lane Commission,' referred these requests to it and empowered it to investigate the compensation of railroad employees and to make such recommendations as should be deemed proper. On the basis of the Commission's report, the Director General's Order No. 27 was promulgated on May 25, 1918. It increased the pay of railway employees then receiving less than $250 per month by percentages graduated from 43 per cent. to the lower paid employees to zero per cent. to those receiving salaries of $249 per month. The principle back of this order was thus stated in the Lane report: 'In fairness a sufficient increase should be given to maintain that standard of living which obtained in the pre-war period * * * and upon those who can best afford to sacrifice should be cast the greater burden.'

General Order No. 27 was based upon the cost of living at the time it was formulated. These costs, however, continued to rise through the years 1918 and 1919. In January, 1919, the shop crafts and thereafter other railroad employees presented requests for further wage increases aggregating some $800,000,000 per annum. The Director General transmitted these requests to the President, who, on August 25, 1919, urged the employees to refrain from pressing them, pending a better op-

portunity to estimate the permanence of high living costs.

In February, 1920, these costs having continued to rise and a reasonable time for the appearance of a trend toward lower living costs having elapsed, the organizations of railroad employees renewed their requests for wage increases to the Director General, who declined to act, and was supported by the President in so doing, in view of the approaching termination of Federal control. The President, however, on February 13th, agreed to use his influence toward the establishment by Congress of legal machinery to deal with controversies between the carriers and their employees. On February 28, 1920, the Transportation Act became law. This Act provides for the appointment by the President of a Railroad Labor Board which shall decide disputes with reference to wages and working conditions of railroad employees. Section 301 of the Act provides that all such disputes shall be considered and, if possible, decided in conference between representatives of the carrier concerned and representatives of its employees. At the suggestion of the President, the requests for increases in wages and for changes in working conditions submitted to the Director General in February were the subject of conference between representatives of the carriers and of the organizations concerned. This conference extended from March 10 to April 1, 1920, but resulted in complete failure to agree.

This long delay and succession of disappointments, coupled with the pressure of a further rise in living costs produced deep and not unreasonable dissatisfaction on the part of railroad employees who felt themselves called on to make sacrifices, as they believed, far beyond those of any other class. Nevertheless, the great majority have continued to serve and to conduct the transportation of the country, awaiting with disciplined and patriotic patience, the reduction of living costs, the decision of the Director General on their

requests, the action of Congress, the conclusions of the conference, the appointment of this Board, the presentation of evidence to it and this decision. Eighteen months will have elapsed when this decision is rendered from the original presentation in January, 1919, of the first of the requests which it in part determines. For these reasons and as a measure of justice it was decided and announced by this Board on June 12th that this decision, when made, would be effective as of May 1st, 1920, and would apply according to the time served to all employees who were in the service as of May 1st and who have remained therein or who have come into the service since and remained therein.

The Board, on the day after its members were confirmed by the Senate (April 15, 1920), received the controversy which had been so long pending and which had remained so long unsettled in spite of the efforts and conferences noted above. From that date until the date of this decision it has been constantly and assiduously engaged in receiving evidence, hearing arguments, reading and considering the many volumes of testimony offered and the many thousands of pages of exhibits and statements. Approximately two million men, comprehended in more than one thousand classifications, are affected by this decision. It is believed that few more serious, difficult and intricate problems have been presented to tribunals of this country."

The Railroad Labor Board, by its said decision, awarded the employees of the railroads engaged in shop and mechanical work, including those so employed on the Pennsylvania Railroad System and represented by System Federation No. 90, an increase in wages of thirteen cents per hour. Subsequently and on or about the 1st day of June, 1921, the Railroad Labor Board, by its decision known as Decision No. 147, reduced the wages of such employees by 8 cents per hour. The

said decision was accepted by the railroads and their employees engaged in shop and mechanical work, including the Pennsylvania Railroad Company and System Federation No. 90 and the members thereof, who continued working upon such reduced wages.

Decision No. 2 of the Railroad Labor Board also contained the following statement and provision to wit:

> "There are in the dispute as presented questions involving rules and working conditions, some of which are interwoven with and materially affect earnings and wages. Adequate investigation and consideration of these questions would demand time. Existing conditions required that the Board should make as early decision of the wage question as practicable. For that reason, it has been necessary,—and both parties to the controversy have indicated it to be their judgment and wish, that the Board should separate the questions involving rules and working conditions from the wage questions. Accordingly, the Board has not undertaken herein to consider or change the rules and agreements now existing or in force by the authority of the United States Railroad Administration or otherwise and this decision will be so understood and applied.
>
> The Board assumes as the basis of this decision the continuance in full force and effect of the rules, working conditions and agreements in force under the authority of the United States Railroad Administration. Pending the presentation, consideration and determination of the questions pertaining to the continuation or modification of such rules, conditions and agreements no changes therein shall be made except by agreement between the carrier and employees concerned. As to all the questions with reference to the continuation or modification of such rules, working conditions and agreements, further hearings will be

had at the earliest practicable date and decision thereon will be rendered as soon as adequate consideration can be given."

22. At the time of the rendition of the said decision by the said Railroad Labor Board, the rules, working conditions and agreements established by the United States Railroad Administration on the railroads of the country, including the Pennsylvania Railroad System, were in full force and effect not only because the said Railroad Labor Board, as stated in its said decision, assumed their continuance in full force and effect, but also as a matter of law because they had at no time been changed or modified by any of the methods provided by the agreements between the parties or by statute, and also because the carriers and employees alike recognized and accepted such rules, working conditions and agreements and continued operation under the same without interruption. The rulings of the United States Railroad Administration, the National Agreement, the provisions of the Transportation Act and the decisions of the Railroad Labor Board rendered in pursuance thereof, all accepted, applied and acted upon by the Pennsylvania Railroad Company, System Federation No. 90, and the members thereof, and all employees of the said Company engaged in shop and mechanical work, thus constituted the agreement as to terms and conditions of employment between the said Company and the said employees.

23. In the month of August, 1920, the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work and represented by System Federation No. 90, learned through various sources that the management of the road contemplated making

substantial changes in their rules and working conditions by reintroducing the "piece-work" system abolished under Federal control and by establishing other rules and working conditions at variance with those in existence without conference with employees or their organizations, without reference of any dispute arising therefrom to the Railroad Labor Board and otherwise contrary to law. System Federation No. 90 through N. Plummer Good, its President, transmitted communications by telegram to the General Managers of the different regions of the Pennsylvania Railroad System, including C. S. Krick, General Manager Eastern Region Pennsylvania Railroad, Broad Street Station, Philadelphia; R. E. McCarty, General Manager Central Region Pennsylvania Railroad, Pennsylvania Railroad Station, Pittsburgh, Pa.; T. B. Hamilton, General Manager Northwestern Region, Insurance Exchange Building, Chicago, Illinois; I. W. Geer, General Manager Southwestern Region, 1110 Syndicate Trust Building, St. Louis, Missouri; P. F. Smith, Jr., Works' Manager, Pennsylvania Railroad Station, Altoona, Pa.; and Ralph Peters, General Manager Long Island Railroad, Pennsylvania Station, New York City, New York. The said communications were uniform in tenor and were as follows:

> "Sometime ago this office was advised by representatives of our organization who had been told by Master Mechanics and Foremen at several shops on the Pennsylvania System that it was the intention of the P. R. R. to introduce a piece work, premium or bonus system on September 1, 1920—Stop
>
> We understand such action to be in violation of Rule One (1) of the National Agreement also of Paragraph four (4) Page eight (8) of Decision two (2) of the National Labor Board—Stop
>
> With a full knowledge of above provisions

we desired to know what the position of the employees affected would be and in order to know this we submitted a referendum ballot which has now been returned and counted with the result that over 99% have signified their desire in favor of calling a strike in event that such an order should be issued at any point on the System—Stop We feel that the matter should now be taken up with the several General Managers with a request that they advise us if it is their intention to issue an order requiring the employees covered by the National Agreement to work on a piecework premium or bonus system so that, if such is your intention, we can advise the National Labor Board, through the proper channels with a request that they take the necessary steps to enforce the application of the Rule and Order above referred to—Stop

Realizing what effect such an order will likely have on the morale of the employees affected I trust you will appreciate the necessity of an immediate reply advising us of your intention.

(Signed) N. P. Good,
President of System Fed. No. 90."

24. On September 1, 1920, replies to the said communication were received by the said N. Plummer Good, President of System Federation No. 90, from the said General Managers of the Pennsylvania Railroad Company, which were likewise uniform in tenor and in each instance read as follows:

"Mr. N. P. Good,
President System Federation No. 90,
Care P. O. Box 173, Harrisburg, Pa.
Dear Sir:
Your telegram of August 30th:

Doubtless you are aware of the fact that the railroad representatives advised the United States Railroad Labor Board that the railroads would comply with the decision of that Board in regards

to working conditions, pending a hearing on the subject to be held by the Board at an early date.

Decision No. 2 of the United States Railroad Labor Board provides that pending the presentation for consideration and determination of the question pertaining to the continuation and modification of such rules, conditions and agreements, no changes shall be made except by agreement between the carrier and employees concerned, including the validity and binding force of the National Agreement and their duty to apply and operate under the same unless or until modified in the manner provided by the Transportation Act

We do not contemplate any changes pending the decision of the United States Railroad Labor Board unless, in the meantime, our officers and such employees as may be concerned, may, by agreement, desire to do so.

Yours truly,

.....

General Manager."

Relying upon the representations and promises contained in the above communications, *i. e.*, that the Pennsylvania Railroad Company would comply with the decision of the Railroad Labor Board and that it would not undertake to change or modify any of the existing rules, conditions and agreements unless by agreement with the employees in the manner provided by law, the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work and represented by System Federation No. 90, upon the advice and direction of said System Federation No. 90, remained at work without interruption.

25. In the month of December, 1920, the Railroad Labor Board took up the consideration of the undecided portion of the dispute between the carriers and organizations of their employees referred to in its

Decision No. 2 above mentioned. The remaining portion of the said dispute grew out of the request made by the organizations of employees to the carriers for certain modifications of the National Agreement and the continuance of the National Agreement with such modifications and the request by the carriers for the abrogation of the National Agreement. The said disputes had been the subject of conferences between such organizations of employees and carriers, including System Federation No. 90 and the Pennsylvania Railroad Company and had been submitted to the Railroad Labor Board because of the failure of such conferees to agree upon the same. Thus both sides again recognized the validity and binding force of the rules and conditions of work established by the United States Railroad Administration as above set forth.

26. On December 18, 1920, the parties to the dispute were notified to present evidence and arguments on the said dispute before the Railroad Labor Board and after hearing such evidence and arguments the Railroad Labor Board reached the following conclusion and decision, which was published and promulgated as Decision No. 119 on the 14th day of April, 1921, to-wit:

> "The duty imposed by Section 301 on all carriers and their officers, employees and agents to consider and if possible to decide in conference all disputes between carriers and their employees has not been performed by the parties hereto either with regard to the wage or the working conditions portion of this dispute. The record shows that the representatives of the carriers were unwilling to assume the responsibility of agreeing to substantial wage increases. Hence, the conference of March 10th to April 1st, 1920, on the side of the carriers was merely a perfunc-

tory performance of the statute. Nor was the action of the organization with regard to the individual carriers more than perfunctory. Naked presentation as irreducible demands of elaborate wage scales carrying substantial increases, or of voluminous forms of contract regulating working conditions, with instructions to sign on the dotted line, is not a performance of the obligation to decide disputes in conference if possible. The statute requires an honest effort by the parties to decide in conference. If they cannot decide all matters in dispute in conference, it is their duty to there decide all that is possible and refer only the portion impossible of decision to this Board.

Although Section 301 has not been complied with by the parties, the Board has jurisdiction of this dispute as it is and has been one likely substantially to interrupt commerce.

The carriers' parties hereto maintain that the direction of this Board in Decision No. 2, extending the National Agreements, orders, etc., of the Railroad Administration as a *modus vivendi* should be terminated at once; and that the matter should be remanded to the individual carriers and their employees for negotiation and individual agreement.

The organizations maintain that the National Agreements, orders, etc., with certain modifications desired by the employees should be held by this Board to constitute just and reasonable rules; and should be applied to all carriers parties to the dispute, except to the extent that any carrier may have entered into other agreements with its employees. They maintain that local conferences requiring necessarily the participation of thousands of railroad employees for several weeks would constitute an economic waste and would produce a multiplicity of controversies as well as irritation and disturbance. They also urge that to require local conferences would be to expose the local organizations on the several carriers to the entire power and weight of all the carriers

acting through the Association of Railway Executives on the conferring carrier, that such a disparity of force would produce an inequitable result highly provocative of discontent and likely to result in traffic interruptions. They, accordingly, insist that the conference should be national.

The carriers maintain that rules negotiated by the employees and officers who must live under them are most satisfactory, that the participants in such negotiations know the intent of the rules agreed to and advise their fellow workmen and officers accordingly thereby avoiding a litigous attitude on both sides, that substantial differences exist as between the several carriers with relation to the demands of the service, necessary division of labor and other factors which differences should be reflected in the rules, that these local differences can be given proper consideration only by local conferences. The carriers refuse to confer nationally.

The Labor Board is of the opinion that there is merit in the contentions of each party and has endeavored to take action which will secure some of the advantages of both courses.

This Board is unable to find that all rules embodied in the National Agreements, orders, etc., of the Railroad Administration constitute just and reasonable rules for all carriers parties to the dispute. It must, therefore, refuse the indefinite extension of the National Agreements, orders, etc., on all such carriers as urged by the employees.

This Board also deems it inadvisable to terminate at once its direction of Decision No. 2 and to remand the dispute to the individual carriers and their employees. Such a course would leave many carriers and their employees without any rules regulating working conditions.

If the Labor Board should remand the dispute to the individual carriers and their employees and should keep the direction of Decision No. 2 in effect until agreements should be arrived at, it is possible that agreements might not be arrived at.

The Labor Board believes nevertheless that certain subject matters now regulated by rules of the National Agreements, orders, etc., are local in nature and require consideration of local conditions. It also believes that other subject matters now so regulated are general in character and that substantial uniformity in rules regulating such subject matters is desirable.

The Board also believes that certain rules are unduly burdensome to the carriers and should in justice be modified. It may well be that other rules should be modified in the interest of employees.

To secure the performance of the obligation to confer on this dispute imposed by law on officers and employees of carriers, to bring about the recognition in rules of differences between carriers where substantial, to preserve a degree of uniformity in rules regulating subject matters of a general nature, to prevent to some extent the operation in negotiations of a possible disparity of power as between the carriers and their employees, and to enable the representatives of employees of each carrier and the officers of that carrier to participate in the formulation of rules under which they must live, the Labor Board has determined upon the following action:

DECISION.

1. The direction of the Labor Board in Decision No. 2, extending the rules, working conditions and agreements in force under the authority of the United States Railroad Administration, will cease and terminate July 1, 1921.

2. The Labor Board calls upon the officers and system organizations of employees of each carrier, parties hereto, to designate and authorize representatives to confer and to decide so much of this dispute relating to rules and working conditions as it may be possible for them to decide. Such conferences shall begin at the earliest possible date. Such conferences will keep the Labor

Board informed of final agreements and disagreements to the end that this Board may know prior to July 1, 1921, what portion of the dispute has been decided. The Labor Board reserves the right to terminate its direction of Decision No. 2 at an earlier date than July 1st, with regard to any class of employees of any carrier if it shall have reason to believe that such class of employees is unduly delaying the progress of the negotiations. The Board also reserves the right to stay the termination of the said direction to a date beyond July 1, 1921, if it shall have reason to believe that any carrier is unduly delaying the progress of the negotiations. Rules agreed to by such conferences should be consistent with the principles set forth in Exhibit 'B', hereto attached."

Exhibit "B" referred to in the above decision was as follows:

"PRINCIPLES.

1.

An obligation rests upon management, upon each organization of employees, and upon each employee to render honest, efficient and economical service to the carrier serving the public.

2.

The spirit of co-operation between management and employees being essential to efficient operation, both parties will so conduct themselves as to promote this spirit.

3.

Management having the responsibility for safe, efficient and economical operation, the rules will not be subversive of necessary discipline.

4.

The right of railway employees to organize for lawful objects shall not be denied, interfered with or obstructed.

5.

The right of such lawful organization to act toward lawful objects through representatives of its own choice, whether employees of a particular carrier or otherwise, shall be agreed to by management.

6.

No discrimination shall be practiced by management as between members and non-members of organizations or as between members of different organizations, nor shall members of organizations discriminate against non-members or use other methods than lawful persuasion to secure their membership. Espionage by carriers on the legitimate activities of labor organizations or by labor organizations on the legitimate activities of carriers shall not be practiced.

7.

The right of employees to be consulted prior to a decision of management adversely affecting their wages or working conditions shall be agreed to by the management. This right of participation shall be deemed adequately complied with, if and when the representatives of a majority of the employees of each of the several classes directly affected shall have conferred with the management.

8.

No employee should be disciplined without a fair hearing by a designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this principle. At a reasonable time prior to the hearing he is entitled to be apprised of the precise charge against him. He shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by a counsel of his choosing. If the judgment shall be in his favor, he shall be compensated for the wage loss, if any, suffered by him.

9.

Proper classification of employees and a reasonable definition of the work to be done by each class for which just and reasonable wages are to be paid is necessary, but shall not unduly impose uneconomical conditions upon the carriers.

10.

Regularity of hours or days during which the employee is to serve or hold himself in readiness to serve is desirable.

11.

The principle of seniority long applied to the railroad service is sound and should be adhered to. It should be so applied as not to cause undue impairment of the service.

12.

The Board approves the principle of the eight-hour day, but believes it should be limited to work requiring practically continuous application during eight hours. For eight hours' pay eight hours' work should be performed by all railroad employees except engine and train service employees, regulated by the Adamson Act, who are paid generally on a mileage basis as well as on an hourly basis.

13.

The health and safety of employees should be reasonably protected.

14.

The carriers and the several crafts and classes of railroad employees have a substantial interest in the competency of apprentices or persons under training. Opportunity to learn any craft or occupation shall not be unduly restricted.

15.

The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all

employees in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice.

16.

Employees called or required to report for work, and reporting but not used, should be paid reasonable compensation therefor."

27. On the 27th day of June, 1921, the Railroad Labor Board promulgated an addendum to the said Decision No. 119, reciting that pursuant to such decision some of the carriers had reached agreements with their employees and others had not and that with respect to such carriers as had not reached such agreements with their employees, the Board had stayed its decision terminating the rules, working conditions and agreements under the authority of the United States Railroad Administration and that with respect to such carriers, such rules, working conditions and agreements would continue in force until modified by agreements with their employees or in the manner prescribed by the Transportation Act. The Pennsylvania Railroad Company was one of the carriers who had failed to reach an agreement with their employees and the said rules, conditions of work and agreements established by the United States Railroad Administration thus remained in force with respect to the said Company after the 1st day of July, 1921.

The employees engaged in shop and mechanical work on the Pennsylvania Railroad System were thus entitled to receive the wages fixed by the decision of the United States Railroad Administration and by the Railroad Labor Board above set forth and to perform their labor under the rules and with the rights laid

down in the decisions of the United States Railroad Administration and the National Agreement, until and unless such rules and rights were changed or modified in the manner provided by the Transportation Act, that is to say after conferences between the organization of such employees, *i. e.*, System Federation No. 90, and the officers of the Pennsylvania Railroad Company, after submission of all points in dispute not decided in such conferences to the Railroad Labor Board, a full hearing on the merits of such disputes by the said Board and a decision of the latter. System Federation No. 90 and the Pennsylvania Railroad Company were specifically directed to designate and authorize representatives for such conferences and to begin such conferences at the earliest possible date. The principles promulgated by the Railroad Labor Board expressly provide for the right of the said employees to organize and the right of organizations of employees, including System Federation No. 90, to act in such conferences through representatives of their own choice whether such representatives were employees of the railroad company or otherwise, and further provide that the majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class and that the organization so designated shall have the right to make agreements which shall apply to all employees in the craft or class.

28. On or about the 1st day of May, 1921, at the City of Philadelphia, in the State of Pennsylvania, the defendant Pennsylvania Railroad Company and the defendants, Rea, Atterbury, Lee, Peck, Whiter, Krick, Clement, Hamilton, McKeen, Geer, Smith and other persons to the plaintiffs unknown, conspired, combined

and confederated together and agreed with each other and among themselves, to deprive System Federation No. 90 and its members and all employees of the said Pennsylvania Railroad Company engaged in shop or mechanical work, of the rights and privileges secured to them under the provisions of the Transportation Act and to injure, oppress, threaten, intimidate, obstruct and prevent them in and from the free exercise of such rights and privileges, *i. e.*, the rights and privileges to participate in determination of what should constitute their just and reasonable wages and in the establishment of rules and working conditions to govern their employment as provided for in the said Transportation Act, *i. e.*, through *bona fide* conferences with their employer and *bona fide* agreements freely and voluntarily reached by the parties in such conferences, submission of all points in controversy not agreed on in such conferences to the Railroad Labor Board and full hearings thereon by the said Railroad Labor Board and securing decisions upon such controverted points by the said Railroad Labor Board, carrying the great moral weight and general prestige of findings of a public tribunal established by the authority of the United States; and the right and privilege to be represented in such conferences with the carrier and at such hearings before the Railroad Labor Board by organizations of their own choice, speaking through officers and counsel skilled and experienced in the presentation of their side of the controversy, and equipped with requisite material, data and proof in support of their contentions, and to act as a unit for the entire force of shop or mechanical employees through the acts and decisions of a majority of them; to weaken, disorganize, disrupt and destroy System Federation No. 90; to obstruct and frustrate its right

to act as representative of its members and of the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work, in conferences with the said Company and at hearings before the Railroad Labor Board to which representation it had a right under the Transportation Act; to prevent and obstruct the right of said system Federation No. 90 to conduct elections among its own members and to submit for the determination of such members questions as to which persons or organizations should represent them in such conferences and at such hearings; to reduce the earnings and wages of the said employees as fixed and established by the United States Railroad Administration and by the Railroad Labor Board and to fix unjust and unreasonable wages in lieu thereof, to increase the hours of work, set aside the classifications of employment, reintroduce the system of piece-work and to impair and depress the standards of compensation and working conditions of members of System Federation No. 90, and all employees of the said Pennsylvania Railroad Company engaged in shop and mechanical work, arbitrarily without conferences between the carrier and such employees and without hearings before the Railroad Labor Board; to evade the provisions of the Transportation Act and all the methods therein provided for the establishment of justice and reasonable wages and fair and proper rules and conditions of work; to disregard and violate the decisions and rules of the Railroad Labor Board and to deceive the employees of the said Pennsylvania Railroad Company and the public at large by creating a false and fraudulent appearance that the Pennsylvania Railroad Company was complying with the law and with the decisions and rules of the Railroad Labor Board.

29. The plan by which the objects of the said conspiracy were to be accomplished as agreed upon between the said conspirators and their confederates was to refuse to recognize System Federation No. 90, its Executive Council and officers, as representatives of the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work, although the defendants well knew that the said System Federation No. 90 represented more than a majority, in fact about 90%, of all such employees, who held voluntary membership in and paid regular per capita taxes to such System Federation No. 90, and although in all previous negotiations between the carrier and such employees under Federal control as well as thereafter System Federation No. 90, its said Executive Council and its said officers, had uniformly represented and acted for the employees of the Pennsylvania Railroad so engaged in shop and mechanical work, and their right and authority had never been questioned; to deny to the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work the right to determine what organization shall represent them in conferences with the carrier and at the hearings before the Railroad Labor Board by free and untrammeled vote or other method of their choice; to have the Pennsylvania Railroad Company initiate and conduct an "election" among its said employees for the designation of such representative, although such designation was entirely the concern of such employees and such employees had the legal right to make their own choice, in their own way, without interference or control on the part of their employer; to conduct such alleged election in such a manner as to obstruct and prevent a free choice of representative or representatives on the part of such employees (1) by dividing the

said employees into five separate groups, known as "regions," (2) to conduct separate "elections" within each of such regions in violation of the provisions of the Transportation Act and the decisions and rules of the Railroad Labor Board which provide for the collective action of all of such employees through a majority of their entire number; to devise a form of ballot which would render it impossible for the majority of such employees to designate System Federation No. 90 as their representative in such conferences and at such hearings although the said System Federation No. 90 was their own organization and was composed of the vast majority of such employees, and to substitute for said System Federation No. 90 a number of disjointed groups without organization and leadership, without officers having the confidence of such employees and skilled and experienced in the presentation of their side of the controversy contemplated by the Transportation Act, without income or funds and without facilities for collecting and presenting proof, material and data and engaging counsel to represent them; to bring about a choice of "representatives" under the control of the Pennsylvania Railroad Company and serving in fact not the interests of the employees but the interests of the said Company; to subvention such representatives and to render them servile to the will of the Pennsylvania Railroad Company by having the latter pay their compensation and expenses thus placing them in the immoral and illegal position of agents being paid and compensated not by their principals but by a party whose interests are often different from and opposed to those of their principals; to secure the consent of such alleged representative of the employees to the establishment of such wages, hours of labor, rules and conditions of work as the said Railroad Company may

deem fit to establish, and to impose such compensation, wages, working hours, rules and working conditions upon all employees of the said Company engaged in shop and mechanical work; to induce such alleged representatives of the said employees to waive all the legal rights, privileges and remedies secured to the employees under the Transportation Act, for and in behalf of such employees; to induce such alleged representatives of the employees to adopt alleged by-laws with the object of perpetuating the evasions of the Transportation Act above set forth and of permanently frustrating, impeding and defeating the right and privilege of the said employees to take collective action under the provisions of the Transportation Act and to hold out such alleged representatives of the employees and the "regional organizations," established not by the employees but by the Railroad Company, and acting in all things in conjunction and with and under the direction of the said Company, as *bona fide* officers and organizations of employees contemplated by the Transportation Act.

30. In furtherance of the said conspiracy and the plan for the accomplishment of its aims, the said Pennsylvania Railroad Company, and its Executive Officers, on the 24th day of May, 1921, refused to recognize System Federation No. 90 and its Executive Council as representatives of its employees engaged in shop and mechanical work, when the said officers of the Executive Council of the system appeared at the principal office of the Pennsylvania Railroad Company, in the City of Philadelphia, ready to confer on the disputes then pending between the said Company and its said employees in conformity with the directions of the Railroad Labor Board, under its Decision No. 119 above set forth. Notwithstanding the fact that the said

Company, as above stated, well knew of the authority of said System Federation No. 90 to represent said employees, it took the position that it had no proof of such authority and informed the said officers of System Federation No. 90 that it, the said Pennsylvania Railroad Company, proposed to submit a ballot to all of its employees engaged in shop and mechanical work calling upon such employees to designate their authorized representative to confer with the carrier. The officers of the Pennsylvania Railroad Company thereupon exhibited to the officers of System Federation No. 90, a draft form of a proposed ballot which was identical with the ballot subsequently submitted by it and a true copy of which is hereto attached, marked Exhibit "A" and made part of this bill of complaint. From the face of the said draft it appeared that it was not contemplated to submit a uniform ballot to all shop craft and mechanical employees of the Company permitting them to collectively designate a representative or representatives for their entire number, but that separate ballots were to be submitted to the employees arbitrarily divided by the Pennsylvania Railroad Company into five regions, the employees in each of such "regions" being called upon to select its own representatives, whose number was arbitrarily fixed by the company at three.

31. Notwithstanding the specific direction of the Railroad Labor Board authorizing the majority of any craft or class of employees to determine what organization shall represent them, and notwithstanding the fact that the said direction was contained on the face of the proposed ballot, thus showing that the Pennsylvania Railroad Company recognized the validity of the said order and accepted the same, the said proposed

ballot contained no room for the name of any organization to be designated by the voters but on the contrary restricted their choice to three individual "committeemen." The said proposed ballot furthermore stated on the face thereof that voting will be confined to active employees only although there were at the time upwards of 30,000 employees in the said shop and mechanical crafts on temporary furlough expected to return to work as soon as the operations of the roads required an increase of such class of employees, and vitally interested in the controversy pending and in the rules and working conditions to be established for them. The said proposed ballot furthermore limited the right of the employees to choose their representatives from among other employees actively engaged in the services of the Company and denied such employees the right to designate representatives not so employed by the Company. The proposed ballot further prescribed a number of rules arbitrarily dictated by the Pennsylvania Railroad Company, not only with respect to the methods of the proposed election, but with respect to the form, framework and functions of an alleged organization of employees to issue from such elections. The plan thus included in the proposed ballot contemplated the establishment of Local Craft Committees of three members and a Chairman, Division Committees composed of the Chairman of Local Craft Committee, and a Regional General Committee composed of a representative selected by the Local Committee of each region. The obvious object of this elaborate system of organization was to split up the employees into numerous nominal organizations and to deprive them of a direct vote in the choice of their most important spokesman, the members of the so-called Regional General Committee. The plan outlined

on the face of the proposed ballot was entirely unauthorized by law and in violation of the rights of the employees to determine upon their own form of organization and methods of collective action. The ballots, according to instructions contained on the face thereof, were to be returned to the Superintendent of the Pennsylvania Railroad Company.

32. The officers of System Federation No. 90 consistently and emphatically objected to the proposed proceeding; they maintained that a choice of representatives of the employees should be left to the employees themselves, and that all elections of such representatives should be conducted by such employees and not by their employer. They also pointed out the numerous irregularities and illegalities appearing on the face of the proposed ballot above set forth and requested the representatives of the Company either to modify the proposed ballot in a manner to give the employees the right and apportunity to vote for an organization of their choice as their representative, or to delay taking a ballot and to submit the question of the methods to be employed in order to ascertain a choice of employees as their representatives to the Railroad Labor Board. The Pennsylvania Railroad Company refused both of such offers and proceeded to and did submit the ballot devised by it to its employees engaged in shop and mechanical work in the manner and by the methods as above set forth.

System Federation No. 90 thereupon instructed its members to disregard the said illegal ballot and submitted a ballot of its own to its members and other employees of the Pennsylvania Railroad Company engaged in shop and mechanical work, which ballot permitted them to vote for an organization as their representatives.

33. The total number of employees entitled to vote on the ballot so submitted by the Pennsylvania Railroad Company within the different "regions" established by the said Company for voting purposes, the number of such employees actually voting and the manner in which such votes were cast and counted, as claimed and set forth by the said Company at a subsequent hearing before the Railroad Labor Board, were as follows:

	Number of Employees		Number voting for individuals	Ballots Not Valid			
				Cast for Organizations			
	Eligible to vote	Voting		System 90	Misc.	Voted blank	For other reasons
Eastern Region	15376	2582	1734	318	18	495	17
Central Region	10760	1651	1191	185	26	164	85
Northwest'n Reg.	2614	776	479	219	6	58	14
Southwest'n Reg.	4354	227	76	45	9	25	72
Total	33104	5236	3480	767	59	742	188

Besides the four "regions" above mentioned, there was another division established for the purpose of such voting by the Pennsylvania Railroad Company, known as the "Altoona Works", which, according to the statement of the Company, contained 2,198 employees entitled to vote and of which 1,320 are alleged by the said Company to have exercised such right. No information was given by the Company as to the manner in which such vote was cast. Without taking into account the said Altoona Works, it thus appears that out of a total of more than 33,000 employees entitled to vote, only 5,236 exercised such right with respect to the ballots submitted by the Pennsylvania Railroad Company. Of these 742 cast blank ballots; 767 wrote in the name of System Federation No. 90 on their ballots, while only 3,480, slightly more than 10% of the total of employees entitled to vote, designated in-

dividual employees as required by the ballots of the Company. The ballot submitted by System Federation No. 90 at the same time was not confined to employees in active service but included also employees on furlough. On this ballot, 32,245 employees of the Pennsylvania Railroad Company cast their vote. Of these 37,238 voted in favor of representation by System Federation No. 90 and only 7 voted against it. But notwithstanding the fact that the overwhelming majority of the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work thus voted in favor of representation by System Federation No. 90 of their own free will and only 10% of such employees voted for individual representation on ballots illegally submitted to them by the Company, the latter arbitrarily and wilfully disregarded the vote and determination of the majority of the said employees and declared the persons alleged to have been elected on the ballot submitted as aforesaid as the legally elected representatives of the said employees and proceeded to deal with them as such alleged representatives of the said employees. In one of the "regions" so established by the Company and known as the "Southwestern Region", the employees alleged to have been designated as representatives in such election, refused to serve on the ground that such elections were illegal and unauthorized, and such employees informed the Pennsylvania Railroad Company, through its proper officers, that they declined to serve as such representatives, that they had not authorized the use of their name in the purported elections and that they recognized System Federation No. 90 as the duly authorized representative of the employees of the Company engaged in shop and mechanical work. But notwithstanding the refusal of such alleged representatives of

the employees to act as such, the Pennsylvania Railroad Company proceeded to establish rules, regulations and working conditions for the employees in such region and published and promulgated such "agreement" over the signature of L. W. Geer, as General Manager of the Southwestern Region, Pennsylvania Lines, without even as much as pretending that the said agreement was signed by any representatives of the employees.

34. As a further part of the said conspiracy, the Pennsylvania Railroad Company and its individual officers, defendants herein, with the aid, accord and confederacy of the persons so alleged to have been elected representatives of the employees on the Company's ballots, proceeded to establish alleged Local Craft Committees, Division Committees and a Regional General Committee, all composed of individuals holding no mandate from the employees but acting in all things in conjunction with and under the direction of the Pennsylvania Railroad Company, and to establish "by-laws" for the regulation of the rights, powers and functions of such alleged committees. The said alleged by-laws purported to legalize and acknowledge such Local Craft Committees, Division Committees and the Regional General Committee, to authorize such Division Committees to negotiate with the Division Officers of the road and to authorize the Regional General Committee to represent the employees of the shop and mechanical crafts of the Pennsylvania Railroad Company, to confer and deal with the General Superintendents and the General Manager of the road. The said alleged by-laws further purported to provide for the establishment of "Joint Regional Committees" to be made up of an equal number of officers of the

Company and purported representatives of the employees, with the provision that such Joint Regional Committees should be the final tribunal for the decision of controversies; that the management of their road should have equal voting power with the alleged representatives of the employees in such committees and that a two-thirds vote should be required to make a decision effective. The said purported by-laws thus undertook to eliminate the Railroad Labor Board from any part in controversies between the employees and the carrier and from any decision on such controversies, and to deprive the employees of the means and methods and for the establishment of just and reasonable wages and working conditions provided by the Transportation Act.

35. Upon the alleged adoption of the said purported by-laws, the defendant Pennsylvania Railroad Company, and its officers, defendants herein, proceeded to meet with the persons alleged to constitute the Regional General Committee of the said employees as a result of the Company's election in the different "regions" so established by it. Such meetings were not in truth or in fact conferences between the carrier and its employees as contemplated by the Transportation Act; the alleged members of the "Regional General Committee' did not represent the majority of the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work on the road as a whole or within the respective regions, and had no power under the law or otherwise to act for such employees or to consent in their behalf to wages, rules or working conditions. Nevertheless the said defendants, in pursuance of the conspiracy above set forth, induced the members of the said alleged "Regional General

Committee" to enter into an agreement with the Company fixing wages, rules, regulations and terms and conditions of work, of all the employees engaged in shop and mechanical work on the said road. The wages, rules, regulations, and terms and conditions of work so fixed by agreement between the Pennsylvania Railroad Company and the alleged representatives of its shop craft and mechanical employees so elected through its own fraudulent contrivances were substantially inferior to those that were established by the United States Railroad Administration and the Railroad Labor Board as aforesaid and were unjust and unreasonable, iniquitous and oppressive; they permitted of the re-introduction of the piece-work system, the disregard of the established classification of employees and of unregulated hours of labor and were generally destructive of the standards and shop conditions theretofore prevailing on the Pennsylvania Railroad System and on all other railroads of the country and resulted in a substantial reduction of the earnings of the employees. The said purported "regulations" or "agreements" were printed, circulated and distributed at the expense of the Pennsylvania Railroad Company. The compensation and expenses of the persons alleged to have been elected by the employees to represent them were likewise paid by the Pennsylvania Railroad Company, and as a matter of fact, the said alleged representatives of the employees acted in all matters as the paid agents of the Pennsylvania Railroad Company.

The Pennsylvania Railroad Company thereupon enforced the scale of wages, rules and conditions of work so agreed upon between itself and the alleged representatives of its employees acting in conjunction with it on all its employees in shop and mechanical crafts without the consent and against the wishes of

such employees and in flagrant violation and disregard of all the methods prescribed by the Transportation Act for the establishment of wages, rules and working conditions of railroad employees.

36. In further pursuit of the said conspiracy, the Pennsylvania Railroad Company on or about the 25th day of July, 1921, notified the officers and representatives of System Federation No. 90, and its affiliated craft organizations, who were on furlough, that their furloughs were cancelled and ordered them to return to work under penalty of dismissal from service. The said order was in violation of the rule established by the United States Railroad Administration directing Railroad Companies to grant leave of absence and free transportation to officers of organizations of employees representing the members and to any employees representing other employees, which rule had been consistently recognized by the Railroad Labor Board and accepted and applied by the railroads of the United States, including the Pennsylvania Railroad Company. The threatened summary dismissal for disregard of the said illegal order was also contrary to the prevailing rule established by the United States Railroad Administration by which no employee in the service of a railroad thirty days or longer shall be discharged for any cause without being given an investigation. The obvious object of the said order was to obstruct, impede and cripple System Federation No. 90 by eliminating all its officers and representatives from the active service of the organization in behalf of its members and to leave System Federation No. 90 without officers or representatives to conduct its business and to properly perform the functions which it was entitled to exercise under the provisions of the Trans-

portation Act. The officers of System Federation No. 90 and its affiliated craft organizations disregarded the said arbitrary and unlawful order, and the Pennsylvania Railroad Company summarily dismissed them from the service in violation of their rights. The plaintiffs N. Plummer Good, H. A. Bixler, Charles Kutz, Walter P. Weller, Arthur C. Myer, George W. Woomer and Alfred J. Burger are such employees of the Pennsylvania Railroad Company and officers and representatives of System Federation No. 90 thus illegally dismissed from the serivce of the said Company, and they bring this action in behalf of themselves and all other officers and representatives of System Federation No. 90 and its affiliated crafts, employees of the Pennsylvania Railroad Company, so illegally dismissed.

37. Between about the month of November, 1920, and the month of March, 1921, the number of employees of the Pennsylvania Railroad Company actively engaged in shop and mechanical work was gradually reduced from about 70,000 to about 35,000. This process of reduction of the active working force was accomplished by granting "furloughs" to the employees "laid off", *i. e.*, such employees were temporarily relieved from active service on the road but retained their status as employees with the right to resume work as the working force of the road would again be increased in the order of their seniority in service as provided for in the agreement between the United States Railroad Administration and the Railway Employees Department of the American Federation of Labor, which agreement and the rules established thereby were then in full force and effect.

38. Immediately after the making of the alleged agreement between the Pennsylvania Railroad Com-

pany and the alleged representatives of the employees in the shop and mechanical crafts of the road, fraudulently and unlawfully contrived as aforesaid, and the alleged establishment of the new wage rates and conditions of work, the Company began to increase the active forces in the shop and mechanical work on the road by ordering such furloughed employees back to work. The furloughed employees reporting back for work in accordance with such order were, in numerous instances, offered employment at work similar to that they had been performing before being furloughed, but their classifications were changed, they were reduced to lower grades and paid lower wages, and their earnings were reduced and impaired. They were also requested to sign an agreement substantially similar in all cases, except for the designation of the region of works, and which read as follows:

"PENNSYLVANIA SYSTEM
ALTOONA WORKS
Altoona, Pa.....

Mr. P. F. Smith, Jr.,
Works Manager.

I have read the Schedule of Regulations adopted by the Management and representatives of the employees of Altoona Works and put into effect July 1st, 1921, by notice of the Works Manager, and am entirely satisfied to re-enter the service under the conditions laid down in said schedule of regulations.

.....Name
..... Address."

The signing of the said proposed agreement on the part of the employees was intended as a ratification of the illegal acts of the Pennsylvania Railroad Company above mentioned and to a waiver of the rights and privileges of such employees under the Transportation

Act, and the attempted exaction of such agreement was in every way unauthorized and unlawful. The furloughed employees first called upon to sign such agreements refused to do so but expressed their readiness to resume employment upon the terms, rules and working conditions legally in force at the time. All of such employees were refused re-employment, under the terms of the existing agreements, rules and regulations in force at the time, and particularly under the rules and agreements establishing the "seniority rights" of employees above set forth, the said furloughed employees had legal and contractual rights to the positions which had thus become vacant and which they had been called upon to fill; that they at all times held themselves in readiness to resume work when vacancies would occur, and were at the time mentioned and have at all times since, remained ready, willing and able to resume such work and to render the services and discharge the duties incident to that employment. By reason of the refusal of the Pennsylvania Railroad Company to permit them to enter upon such services under the terms and conditions legally established with respect to such employments, the said furloughed employees have been deprived of the benefit of the said legal and contractual rights and of the means of earning and living and have thereby sustained damages in the loss of earnings and otherwise amounting in the aggregate to upward of $2,000,000. Approximately 5,000 of said furloughed employees so refused to sign the illegal agreement sought to be exacted from them and were refused re-employment on that ground. Each of such employees asserts his claim to such damages and seeks to recover the same against the said Pennsylvania Railroad Company. Plaintiff Rome La Fontain is one of such em-

ployees and brings this action in behalf of himself and all other employees of the Pennsylvania Railroad Company similarly situated because such employees are very numerous and in order to avoid a multiplicity of actions.

39. At the same time a large number of employees of the Pennsylvania Railroad Company engaged in shop and mechanical work and holding membership in System Federation No. 90, who were not on furloug but actively engaged at work for the said Company, were requested by the management of the said Company to sign agreements similar to those which the furloughed employees were requested to sign, *i. e.*, agreement purporting to express their entire satisfaction with the wages and conditions of work illegally established by the Company as above set forth in cooperation and confederacy with the alleged representatives of the employees of its own choice. A number of such employees refused to sign such purported agreements on the same grounds as those above set forth for the refusal of the furloughed employees to sign similar agreements and such employees were thereupon discharged by the Pennsylvania Railroad Company in violation of its agreement not to discharge employees without just cause and without a hearing. By reason of such unlawful discharge, the said employees have been wrongfully deprived by the Pennsylvania Railroad Company of the earnings to which they had a right by law and have sustained damages amounting in the aggregate to upward of $2,000,000. Each of such employees asserts his claim to such damages and seeks to recover the same against the Pennsylvania Railroad Company. Plaintiff George Cramer is one of such employees and brings this action in behalf of himself

and all other employees of the Pennsylvania Railroad Company similarly situated because such employees are very numerous and in order to avoid a multiplicity of actions.

40. Thereafter System Federation No. 90, still hoping that the Pennsylvania Railroad Company would modify its policy as a result of the anticipated decision of the Railroad Labor Board in the controversy which was then pending before it between the said System Federation No. 90 and the Pennsylvania Railroad Company, growing out of the illegal acts of the latter above set forth, and having made a formal protest to the Pennsylvania Railroad Company against the policy of requiring such agreement from furloughed employees as above mentioned, directed its members to sign such agreements if such signing was made an absolute condition of their re-employment. A very large number of furloughed employees of the Pennsylvania Railroad Company holding membership in System Federation No. 90, thereupon signed such agreement under duress and under the protest of their organization as aforesaid. Plaintiff Henry Rothermell is one of such employees and brings this action in behalf of himself and other employees similarly situated.

The acts of the defendants above complained of were in violation of the Transportation Act, of the rules and decisions of the Railroad Labor Board and of the agreement between the Pennsylvania Company and its employees engaged in shop and mechanical work established by the orders, agreements and rules of the United States Railroad Administration, the provisions of the Transportation Act, the rules and decisions of the Railroad Labor Board and by the acceptance of the same by the said employees and by the said Railroad Company.

41. The said illegal acts of the said defendants so done and performed as aforesaid in pursuance of the said conspiracy in 1921, were substantially re-enacted and repeated by the said defendants in pursuance of the same conspiracy, upon the same plan and with the same object and result, in one of the "regions" created by the Company as aforesaid in 1922, and in all of such regions in 1923. In each of the said years, the said defendant called and held alleged elections among its said employees engaged in shop and mechanical work for the alleged purpose of designating representatives of such employees in the unlawful manner above described, entered into alleged agreements with such unauthorized alleged representatives of the said employees and enforced the terms of such alleged agreements upon all of the said employees without their consent and in violation of their rights and privileges under the Transportation Act. The unjust and unreasonable wages and the unjust, arbitrary and oppressive rules and conditions of work established by the Pennsylvania Railroad Company in 1921, in the manner above described, were thus continued ever thereafter and are now being enforced upon the said employees.

42. In the execution of the said conspiracy, the said defendants were aided and abetted by certain employees of the Pennsylvania Railroad Company, who assumed to act as representatives of the employees engaged in shop and mechanical work of the Pennsylvania Railroad Company and to agree to rates of wages and terms of employment in behalf of such employees, although they had no authority from such employees under the provisions of the Transportation Act or otherwise, and although in fact and in truth they did

not act in behalf or for the interests of such employees but solely for the interests of the Company as its paid and subventioned agents.

The defendants, T. H. Davis, W. J. Hilton, Charles Mode, J. E. Cavey and C. G. Larson, are such employees; they joined in the conspiracy above described after the formation thereof and are actively co-operating and confederating with the other defendants in the execution of the plan of the said conspiracy and in the attainment of the unlawful object thereof.

43. System Federation No. 90, and the members of the same, and the employees of the Pennsylvania Railroad Company in shop and mechanical employment have, at all times, vigorously protested against the acts of the defendants above set forth and have diligently and consistently asserted their claims to the rights and privileges accorded to them by the provisions of the Transportation Act.

44. When the Pennsylvania Railroad Company, after preparing its unlawful ballots above described, refused to modify the same or to submit the question to the proper form of a ballot to the Railroad Labor Board, the Federated Shop Crafts of the Pennsylvania System represented by System Federation No. 90 and by the Railway Employees Department of the American Federation of Labor made an *ex parte* submission to the Railroad Labor Board of the said dispute. Upon such submission, hearings were had before the Railroad Labor Board, at which the employees were represented by System Federation No. 90 and by the Railway Employees Department of the American Federation of Labor, and the Pennsylvania Railroad Company attended by its officers. Upon a full hear-

ing of both sides of the controversy, the Railroad Labor Board on the 26th day of July, 1921, rendered a decision known as Decision No. 218, holding in part as follows:

> "The carrier had no more right to undertake to assume control of the selection of the representatives of the employees than the employees would have had to supervise the naming of the representatives of the carrier, for the statute plainly provides that the employees shall 'designate and authorize' their representatives. In this sophisticated land of poplar elections, no political party would submit to having its primary held and managed by the opposing party. It is entirely proper, however, that the carrier should keep in close touch with said election, and should be given every facility for first hand knowledge of the manner in which it is conducted and the correctness of the result reached and announced.
>
> The carrier was not justified in refusing the request of the employees to place on the ticket the name of the organization. The granting of this one request would have avoided all trouble, and nobody would have suffered any injury, because the name of any other organization or the names of individuals could have appeared on the ticket, and all employees, union and non-union, would have had the right to vote. If a majority of the employees had not wanted to be represented by the organization, they would have had the unobstructed right to say so.
>
> Representation by the organization is only representation by individuals after all. There is nothing in the statute to deny the employees the privilege of belonging to an organization and being represented by that organization through its accredited officers. In fact, this has been the established custom for many years and is recognized in the Transportation Act itself.
>
> In excerpt No. 3 from the Transportation Act,

above set out, the 'chief executive of any organization of employees' is authorized to submit to the Labor Board any dispute where disagreements have occurred in the conference between the carrier and employees. The existence of the organization of employees is thus recognized as it is elsewhere in the statute.

The Labor Board also holds that the employees may vote for representatives who are not employees of the carrier, if they so desire, just as the carrier may select a representative who is neither a director nor a stockholder. It is out of line with the customary procedure in this country to contend that a party to any suit or controversy in any court or tribunal shall be denied counsel and compelled to represent himself. It seems, however, that the employees in this instance were not asking to have the name of any outsider placed on the ballot, but simply the name of their organization, which would have resulted, as the carrier well knew, in the employees being represented by the officers of the organization who are employees of the carrier.

The carrier had no legal authority to divide its system into regions and require the employees to elect regional representatives. The Transportation Act contemplates that the employees of the class directly interested on an entire system shall select representatives. It is easy to see how an arbitrary regional division of the employees by the carrier might be as unjust as it is unlawful.

After having failed to reach a satisfactory agreement with the carrier as to the ballot, the shop crafts put out a ballot of their own with no provision for any representatives to be voted for except organizations. This was not authorized by law and ignored the rights of the non-union men.

Neither election, as held, was fair and legal. As a consequence of the failure of the parties to agree upon a method of holding an election, the employees have so far been denied their legal

right to select their representatives for this important conference on rules. As evidence of the fact that no real test of the choice of the employees has been had, the carrier in its own presentation to this Board admits that, exclusive of the Altoona shops, only 3,480 men voted, out of 33,104 entitled to vote, for the alleged representatives who are now negotiating rules. In other words, only 10.5 per cent. of these employees are represented in these negotiations, and 89.5 per cent., are virtually disfranchised. This is the big, outstanding uncontroverted fact presented in this case, and undoubtedly the law provides a remedy for such a wrong.

It is the duty of the Labor Board to settle this dispute by providing a method that will protect the legal rights of every employee, union and non-union, to the end that the carrier and this class of employees may proceed to the orderly negotiation of rules.

Neither of the parties to this dispute can serve the country, or justify themselves in the eyes of the public by any amount of propaganda, if they permit a controversy over small technicalities to interrupt commerce and bring loss and suffering to themselves and the public.

There is no question of the closed or open shop involved in this dispute and no other real matter of principle. The question involved is merely one of procedure.

At a time when the nation is slowly and painfully progressing through the conditions of industrial depression, unemployment and unrest consequent upon the war, it is almost treasonable for any employer or employee to stubbornly haggle over non-essentials at the risk of social chaos.

DECISION.

Under the authority of the Transportation Act, as hereinbefore cited, the Labor Board hereby declares that both of said elections on the Pennsylvania System were illegal and that rules

negotiated by the alleged representatives selected by either ballot will be void and of no effect, and orders that a new election be held.

For the purpose of determining the choice of a majority of each of the respective crafts coming under the provisions of this decision the following shall govern:

EMPLOYEES ELIGIBLE TO VOTE.

1-a. All machinists, apprentices, and helpers, as defined in and coming under the provisions of Decision No. 2 (Dockets 1, 2 and 3), issued by the United States Railroad Labor Board under date of July 20, 1920, in the service of the carrier, including Altoona Works, and including all employees coming under the provisions of this decision who have been laid off or furloughed and are entitled to return to the service, under the seniority rules, when the force is restored to what is generally recognized as constituting a normal force, if accessible, shall be furnished a ballot and be permitted to vote.

1-b. All boilermakers, apprentices, and helpers, same definition and conditions as set forth in preceding 1-a to apply.

1-c. All blacksmiths, apprentices, and helpers, same definition and conditions as set forth in preceding 1-a to apply.

1-d. All sheet metal workers, apprentices, and helpers, same definition and conditions as set forth in preceding 1-a to apply.

1-e. All electrical workers, apprentices, and helpers, same definition and conditions as set forth in preceding 1-a to apply.

1-f. All carmen, apprentices, and helpers, same definition and conditions as set forth in preceding 1-a to apply.

CONFERENCE AND REPRESENTATION.

A conference shall be held on or before August 10, 1921, at such place as the carrier may designate (of which due notice shall be given to all

parties interested), between the duly authorized representatives of the carrier and the duly authorized representatives of System Federation No. 90; the duly authorized representatives of any other organization (representing the classes of employees set out in preceding 1-a to 1-f inclusive) whose by-laws or constitution establishes the fact that the organization was established for the purpose of performing the functions of a labor organization as contemplated in Title III of the Transportation Act, 1920; and the duly authorized representatives of one hundred or more un-organized employees, selected by the respective crafts set out in the preceding standing as to the distribution, casting, counting and tabulating of the ballots and announcing the results thereof.

NOTE:—Representatives of unorganized employees authorized and desiring to attend this conference must have the individual and personal signature and authorization of not less than one hundred employees of a single craft, such authorization shall likewise name the place of employment and craft to which each belongs.

BALLOTS.

The employees shall, at their own expense, have ballots and envelopes printed in sufficient numbers to provide each employee an opportunity to vote.

Six sets of ballots and envelopes shall be printed, a separate and distinct ballot for each craft as per the following, and only the craft named thereon shall be permitted to use the ballot:

PENNSYLVANIA SYSTEM
MACHINISTS, APPRENTICES, AND HELPERS
OFFICIAL BALLOT.

A dispute exists between the carrier and System Federation No. 90 of the Railway Employees' Department of the A. F. of L., as to who the employees, in the craft above named, desire to be

represented by in the conference to negotiate rules and working conditions.

The machinists, apprentices, and helpers, irrespective of membership or non-membership in any organization, are therefore to be given an opportunity to designate, by a majority vote, the representation of their choice, as follows:

Those in favor of either of the following will designate their choice by making an X in the square set out for that purpose.

Those who desire to be represented by System Federation No. 90, Railway Employees' Department of the A. F. of L., mark an X in this square.....	.....
Those who desire to be represented by the American Federation of Railroad Workers, mark an X in this square	.....
Those who desire to be represented by individuals or by any other organization, write the name of such individual or organization here ..... and mark an X in this square.....	.....

Place employed .....
Craft .....
Actually working .....
Laid off or furloughed.....
Name of voter.....

If, in any craft, no organization or individual receives a majority of the legal votes cast, a second vote shall be taken in the same manner, and on the same kind of ballot, but the second ballot will contain only the names of the two organizations or individuals receiving the highest number of votes cast in the first election.

VOTING.

The vote shall be taken by crafts, each craft to include mechanics, apprentices and helpers. A

majority of each of the respective crafts shall have the right to determine by whom they desire to be represented; this right shall not be construed to mean that employees shall be denied the right to name an organization as their representative, neither shall it be construed to prevent the employees from naming an individual who is not an employee of the carrier.

DISTRIBUTION, VOTING AND COUNTING.

A general committee, composed of duly authorized representatives of the carrier, duly authorized representatives of System Federation No. 90, and the duly authorized representatives of any other organization or one hundred or more employees participating in accordance with the provisions of this decision, will be located at designated places for the purpose of distributing, receiving, counting and tabulating the results of the ballot.

A local committee composed of the duly authorized representatives as above outlined will be established at each division point and at Altoona Works for the purpose of receiving, distributing, packing and forwarding the ballots by express or registered mail to the general committee. Local committees will see that each employee is given every opportunity to vote and that his ballot is placed in envelope and sealed; the local committee shall also keep a record of the ballots received.

Only the general committee is authorized to open envelopes and count the ballots. Where the force is limited and the local committee cannot be procured, arrangements shall be made to place ballots in the hands of such employees and they shall be properly instructed as to the manner of getting their ballot to the general committee.

The ballot should be completed at the earliest possible date. No one but the general committee is authorized to open, count and tabulate the returns of the ballot, and all parties to the dispute

are entitled to be present when any ballots are opened and counted.

When the ballots have been canvassed, the result shall be reported to the Labor Board and the representatives of the carrier and the employees will proceed with the negotiation of rules.

If either party to this dispute believes that the spirit and intent of this decision is not being complied with, the complaint should be filed with this Board with all supporting data.

By order of

UNITED STATES RAILROAD LABOR BOARD,
R. M. BARTON, *Chairman.*

Attest:

C. P. CARRITHERS,
Secretary."

45. The said decision constituted regulations necessary for the efficient execution of the functions vested in the Railroad Labor Board by Sub-division (4) of Section 308 of the Transportation Act and the rules therein provided for the manner of taking the vote of the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work, was mandatory and binding upon the said Pennsylvania Railroad Company as well as upon the said employees, but the Pennsylvania Railroad Company wilfully refused to submit to the same or to carry out any of its provisions; to cancel and disregard the illegal "election" held by it as above mentioned and to call and hold a new election in the manner prescribed by the said decision or otherwise. Upon such refusal of the Pennsylvania Railroad Company to comply with the order of the Railroad Labor Board, the said Board cited the Company to appear before it at a hearing to be held on October 20, 1921, for the purpose of determining whether its decision last above mentioned had been violated by

the Company. Such hearing was had on the date last above mentioned; the Pennsylvania Railroad Company participated in the same and contended in substance that the Railroad Labor Board had no jurisdiction over the dispute and no right to determine the manner in which its employees should elect their representatives to represent them in conferences and at hearings under the provisions of the Transportation Act. After the said hearing, and prior to the pronouncement of the decision arrived at by the Railroad Labor Board, the Pennsylvania Railroad Company procured an injunction in the District Court of the United States for the Northern District of Illinois, Eastern Division, enjoining and restraining the Railroad Labor Board and its members from proceeding to render a decision on the said dispute and from making publication of such decision. An appeal from the said order was taken by the said Railroad Labor Board, represented by the Department of Justice, to the United States Circuit Court of Appeals for the Seventh Circuit. Such appeal was argued in the April Session 1922 of the said Court and the order of the District Court appealed from was reversed and the injunction vacated by the said Circuit Court of Appeals. The Pennsylvania Railroad Company thereupon appealed from the said decision and order of the Circuit Court of Appeals to the Supreme Court of the United States which, on the 19th day of February, 1923, unanimously affirmed the decision of the Circuit Court of Appeals and fully upheld the right of the Railroad Labor Board to issue its Decision No. 218 and the validity of the said decision.

46. With the legality of Decision No. 218 of the Railroad Labor Board thus established by the highest

court of the land, the said Railroad Labor Board, on its own motion, again requested the Pennsylvania Railroad Company to comply with the said decision and to permit its employees in the shop and mechanical crafts to select their representatives for the purposes set forth in the Transportation Act in a fair and lawful manner, but again said Pennsylvania Railroad Company refused to comply with such request and persisted in continuing in the unlawful methods aforesaid in the alleged selection of employees' representatives and in the making of alleged agreements with such representatives. Thereupon and on the 12th day of June, 1923, the said Railroad Labor Board made its decision, known as Decision No. 1829, in which some of the above facts were recited and which embodied the following findings, opinion and decision, to wit:

> "The course adopted by the Pennsylvania System in this matter is indefensible from every viewpoint. It cannot be justified on the ground that the contention of the employees or the decision of the Board deprived the carrier of the right to deal with its own employees. System Federation No. 90 was composed exclusively of employees of the Pennsylvania System and their officers and representatives were employees of the carrier. If, in rare instances, these local representatives of the employees availed themselves of the advice and assistance of the officers of their national organization or of other counsel, this would have been the exercise of a fundamental right. The Board's decision did not require the carrier to negotiate with System Federation No. 90 or any other organization, but merely accorded to the employees the right to choose between System Federation No. 90 and the organization set up by the carrier.
>
> The plan called "employee representation," which the Pennsylvania System assumes to have

originated, is guaranteed in the Transportation Act, 1920, and prevails on the railroads throughout the United States. If employee representation means anything at all, it signifies the right of a class of employees, through majority action, to select their own representatives to negotiate with the carrier agreements covering wages and working conditions. This is what Congress said it meant, but the shop crafts have so far been deprived of this plain, simple, indisputable right on the Pennsylvania System. The carrier has not questioned the right of these employees to choose their own representatives, but it has prevented the exercise of this right. While professing its acceptance and observance of the principle of employee representation, it has set up a system which throttles the majority and establishes the representation of a coerced and subservient minority proven originally to amount to about ten and one-half per cent. (10½%) of this class of employees.

While the carrier was refusing to deal with the organization of the shopmen and that of the clerks, as such, it negotiated agreements with the train and engine brotherhoods, which they signed officially as the representatives of those organizations. If the same right had been accorded to the shopmen, this controversy would never have existed.

The problem of efficient and uninterrupted railway transportation is of paramount importance to the people of this country. The peaceful adjustment of labor controversies greatly contributes to this end. The method provided by Congress for the settlement of labor disputes has been honored and observed both by carriers and employees in an overwhelming number of instances. The railroad which refuses to conform to the labor provisions of the Federal Law assumes toward the public the same attitude held by em-

ployees who strike against said provisions. No other railroad in the United States has taken a position similar to that adopted by the Pennsylvania in this case.

DECISION.

The Railroad Labor Board under the authority of Section 313 of the Transportation Act, 1920, finds that the Pennsylvania System has violated Decision No. 218 of the Board, after the Supreme Court of the United States had upheld the Board's right to render said decision, and has thereby denied to its shop employees essential rights as laboring men to which Congress had declared them entitled.

By order of
UNITED STATES RAILROAD LABOR BOARD,
(Signed) BEN W. HOOPER, *Chairman.*
Attested:
L. M. PARKER,
Secretary."

47. Members of System Federation No. 90 and the employees of the Pennsylvania Railroad Company, engaged in shop and mechanical work, continued in the employment of the said Company after July 1st, 1921, and after the violations by the said Company of the provisions of the Transportation Act and the rules and decisions of the Railroad Labor Board as above set forth, upon the unjust and unreasonable scale of wages and under the unjust and oppressive rules and conditions of work illegally established by the Company as above set forth, and forced upon them without their consent and against their protest, in the hope and expectation that the Pennsylvania Railroad Company and its officers, defendants herein, would eventually abandon their unlawful conduct and submit to the directions of the Transportation Act and the decisions of the Railroad Labor Board. But when

the Pennsylvania Railroad Company and its officers evinced and expressed a fixed determination to continue and perpetuate their unlawful plan and scheme to evade and defeat the provisions of the Transportation Act and the decisions of the Railroad Labor Board and to continue to enforce the unjust and unreasonable wages and unjust and oppressive rules and conditions of work by and with the consent and connivance of the said alleged representatives of the employees, who in fact were the Company's paid agents, and it became apparent that the said defendants would not voluntarily comply with the law and the decisions of the Railroad Labor Board and would not voluntarily accord to the said employees the rights and privileges secured to them by the Transportation Act, including just and reasonable wages and fair rules and working conditions, System Federation No. 90, acting for and on behalf of its members, on the 3rd day of October, 1921, submitted to the latter a vote on the following question, to wit:

> "In the event the Pennsylvania Railroad System refuses to comply with Decision No. 218 of the United States Railroad Labor Board, shall a strike be authorized on a date to be later set?"

The members of System Federation No. 90, by an overwhelming majority vote, answered its said question so submitted to them in the affirmative and the said vote and action of the members were approved of and ratified by the Employees Department of the American Federation of Labor and International organizations affiliated with the same in accordance with the requirements of the constitution and by-laws of System Federation No. 90. Thereafter and on the 1st day of July, 1922, System Federation No. 90 authorized its said members to cease working for the Pennsylvania

Railroad Company until such time as the said Company would comply with the provisions of the Transportation Act and the lawful decisions of the Railroad Labor Board and accord to its employees the rights and privileges secured to them under the provisions of the Transportation Act and said decisions of the Railroad Labor Board.

48. About 30,000 members of System Federation No. 90 accordingly suspended their work for the Pennsylvania Railroad Company and went upon a "strike" so called. The complainant alleges that the sole object of the said strike was to enforce compliance with the law by the Pennsylvania Railroad Company and to enforce the rights and privileges of the employees secured to them under the provisions of the Transportation Act and unlawfully and wilfully denied to them by the said Company. The said employees on strike did not abandon their positions as employees of the Pennsylvania Railroad Company, nor did they surrender their rights as such employees, but on the contrary at all times consistently asserted such rights and declared their readiness to resume work in their respective employments on the road as soon as the said Pennsylvania Railroad Company would abandon its lawless attitude of defiance of the Transportation Act and the decisions of the Railroad Labor Board and accord the said employees their rights and privileges under the said Act and decisions. Such offers to resume work solely upon the condition above mentioned were made directly to the defendant Pennsylvania Railroad Company and its officers by representatives of System Federation No. 90 and by the Railway Employees Department of American Federation of Labor at numerous times and on numerous occa-

sions between the said first day of July, 1922, and the date of the commencement of this action. On March 17, 1923, immediately after the decision of the Supreme Court of the United States above mentioned, System Federation No. 90 again formally informed the said Pennsylvania Railroad Company of the readiness of its members to resume their work on the Pennsylvania Railroad System upon the terms and conditions established by law and by decisions of the Railroad Labor Board. The said defendant, however, at all times including the occasion last mentioned, stubbornly and wilfully refused to permit its said employees to resume work upon terms and conditions as to wages and rules as established by law in the manner above set forth.

The plaintiff Jacob Kern is one of the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work, who thus suspended work and went on strike. He is suing herein in behalf of himself and all other employees similarly situated and too numerous to be brought into this suit directly.

49. A large number of other members of System Federation No. 90 declined to avail themselves of the authority to suspend their work above set forth and continued working for the said Pennsylvania Railroad Company in their respective employments and are still so working upon terms as to wages, rules and conditions of work which are unjust and unreasonable and illegally enforced upon them without their consent, against their will and under their protest.

The plaintiff F. M. Keech is one of such employees and sues herein in behalf of himself and all other employees similarly situated and too numerous to be brought in as direct party plaintiffs in this suit.

50. As set forth above, the rate of wages of the employees of the Pennsylvania Railroad Company and the rules, classifications and conditions of work which determined their earnings, lawfully in force on the 1st day of July, 1921, were those established by the United States Railroad Administration and modified by the Railroad Labor Board through the methods and in the manner prescribed by the Transportation Act, and the said employees were legally entitled to the continued payment of such wages and the continued application of such rules, classifications and conditions of work, unless the same were changed by voluntary agreement between the carrier and the said employees, or by lawful decisions of the Railroad Labor Board, and in any event until such time as any question or controversy with respect to any reduction or any contemplated reduction of such wages or change or contemplated change in such rules, classifications or conditions of work had been discussed in conference between the carrier and such employees and the resultant disagreements, if any, on the subject, submitted to the Railroad Labor Board with the opportunity to such employees to have a full hearing on the issue before such Board and to obtain the benefit of the said Board's decision.

The Pennsylvania Railroad Company, without agreement on the part of such employees, without being authorized thereto by the Railroad Labor Board, without conference with its employees in the manner provided in the Transportation Act, and without hearing before the Railroad Labor Board but solely by means of the illegal methods, plans and schemes above set forth, assumed to reduce the earnings of such employees by decreasing the wages, abolishing classifications, re-introducing the system of "piece-work" and

changing the rules and conditions of work thus established by law and theretofore accepted, recognized and applied by the carrier as well as by such employees, and at all times thereafter paid and still continues paying such employees less than the earnings they were entitled to and less than the wages so established by law and less than just and reasonable wages. Such payments have been accepted and are being accepted by such employees, members of System Federation No. 90, under compulsion and without their consent and without a waiver of their right to the earnings and wages established for them by law and by agreement between the parties as above set forth and without a waiver of their rights and privileges to receive and enforce just and reasonable wages by the methods prescribed in the Transportation Act. Each of the said employees, members of System Federation No. 90, who was working for the said Pennsylvania Railroad Company between July 1st, 1921 and July 1st, 1922, and did not receive the full amount of wages which he by law was entitled to receive and which the Pennsylvania Railroad Company by law was obligated to pay, is lawfully entitled to receive the difference between the amount of earnings and wages that were lawfully due him for the work done by him during the said year and the amount of earnings and wages received by him. The Pennsylvania Railroad Company owes the amount of such difference to each of such employees and the said employees hereby assert such claims and demand the payment thereof by the said Pennsylvania Railroad Company.

The aggregate amount of such claims exceeds the sum of $5,000,000.

Plaintiffs Henry Rothermell and Jacob Kern are such employees of the Pennsylvania Railroad Com-

pany and bring this suit in behalf of themselves and all other employees similarly situated because such employees are too numerous to be brought in as direct party plaintiffs in this suit and in order to avoid a multiplicity of actions.

51. Each of the employees of the Pennsylvania Railroad Company, members of System Federation No. 90, who worked for the said Company between the 1st day of July, 1921, and is still so working and did not receive the full amount of earnings and wages which he by law was entitled to receive and which the Pennsylvania Railroad Company by law was obligated to pay, is lawfully entitled to the difference between the amount of earnings and wages that was lawfully due him for the work done by him since the said 1st day of July, 1921, and the amount received by him since such date. The Pennsylvania Railroad Company owes the amount of such difference to each of such employees and the said employees hereby assert such claims and demand the payment thereof by the said Pennsylvania Railroad Company.

The aggregate amount of such claims exceeds the sum of $1,000,000.

Plaintiff F. M. Keech is such employee of the Pennsylvania Railroad Company and brings this suit in behalf of himself and all other employees similarly situated because such employees are too numerous to be brought in as direct party plaintiffs in this suit and in order to avoid a multiplicity of actions.

52. The plaintiffs allege that the defendant, Pennsylvania Railroad Company, has in its possession all payrolls, books of account and records showing the names of the furloughed employees who were entitled to re-employment under the seniority rights above

mentioned, the dates upon which they respectively became so entitled to re-employment, the kind, grade and classification of work which they were to do, and the lawful compensation therefor; the amount of wages paid by it to each of its employees engaged in shop and mechanical work who did work for the said Company after the 1st day of July, 1921, including all employees in whose behalf this suit is brought, and that the said payrolls, books and records and the preservation of the same are necessary for a just and proper computation of the amounts of unpaid wages due to the said respective employees and sought to be recovered herein and the pecuniary damages otherwise sustained by them as herein set forth.

53. The continued refusal of the Pennsylvania Railroad Company to permit its employees engaged in shop and mechanical work to select their own representatives for the purpose of conferring with representatives of the said Company and appearing at hearings before the Railroad Labor Board under the provisions of the Transportation Act, free from the control, interference and meddling on the part of the Company, to act together as one body in the designation of such representative and thus to ascertain the choice of the majority of them as directed by the Transportation Act and the rules and decisions of the Railroad Labor Board, to designate an organization of their own voluntary choice and creation to act as their representative, and to finance and equip such organization to enable it to properly perform its functions and duties to such employees without subservience and obligations to the Company; its continued refusal to confer and deal with System Federation No. 90 as such authorized representative of said employees,

to submit ballots and conduct elections for the designation of representatives of the said employees for the purposes of the Transportation Act in the form and manner and by the methods prescribed by the Railroad Labor Board; to pay the wages and to apply the rules and conditions of work to its employees in shop and mechanical work as fixed and established by the National Agreement, the rules of the United States Railroad Administration, and the decisions of the Railroad Labor Board accepted by both parties as aforesaid; to confer in good faith with the duly authorized representatives of such employees about any proposed changes of such wages, rules and working conditions and to submit any controversy on such subjects not agreed upon in conference to the Railroad Labor Board, and the continuance by the defendants of the other unlawful acts and conduct above set forth in pursuance of the unlawful conspiracy among them are causing irreparable damage and injury to System Federation No. 90, its members, the employees of the Pennsylvania Railroad engaged in shop and mechanical work and the individual complainants herein and all other persons similarly situated with them and in whose behalf they are suing; the property rights of System Federation No. 90, its members, the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work and of the individual complainants and the persons similarly situated in whose behalf they are suing have been and are being jeopardized and destroyed; numerous members of System Federation No. 90 have become and are becoming detached from membership in the said system as a result of the defendants' unlawful acts above complained of, its income from dues and per capita taxes is being reduced, its funds are dissipated, and its functions, use-

fulness and very existence are seriously jeopardized; the members of System Federation No. 90 and employees of The Pennsylvania Railroad Company engaged in shop and mechanical work are being deprived of their rights and privileges under the Transportation Act, including their right to establish just and fair wages and rules and working conditions in the manner prescribed in the said act, and they are being forced to work for unjust and unreasonable wages and under unjust and oppressive rules and conditions of work illegally established. The complainants have no adequate remedy at law to redress such grievances and to compensate them for such damages and injuries, which are continuing, irreparable and incapable of exact computation.

54. The defendants herein threaten to continue applying the unlawful methods for the designation of representatives of the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work which they have applied in the years 1921, 1922 and 1923 to future elections and to continue to deny such employees the right to elect their own representatives for the purposes of the Transportation Act, and to continue in the execution of the plan of their conspiracy above set forth, and unless the Court will grant the relief hereinabove prayed for, including the preliminary injunction prayed for, there is imminent danger that the defendants will succeed in attaining the end and purpose of their conspiracy and that the rights of the complainants under the Transportation Act and under the decisions of the Railroad Labor Board rendered in pursuance thereof, and all the legal rights of the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work will be obstructed, frustrated and defeated and the

purpose of the Transportation Act and particularly Title III thereof will be defeated with respect to such employees, and that the losses and damages of such employees and of System Federation No. 90 will be further increased in large amounts.

55. Forasmuch, therefore, as the complainants are without remedy except in a court of equity, where matters of this character are properly recognizable and relievable, the complainants pray that the said Pennsylvania Railroad Company and Samuel Rea, W. W. Atterbury, Elisha Lee, George L. Peck, E. T. Whiter, C. S. Krick, M. W. Clement, T. B. Hamilton, Benjamin McKeen and I. W. Geer, P. F. Smith, Jr., T. H. Davis, W. J. Hilton, Charles Mode, J. E. Cavey and C. G. Larson, who are made parties defendant to this bill may be required to make full and direct answers thereto, but not under oath, answer under oath being herewith waived, to all and singular the matters and things hereinbefore set out; that an injunction be issued herein restraining the said Pennsylvania Railroad Company and the said Samuel Rea, W. W. Atterbury, Elisha Lee, George L. Peck, E. T. Whiter, C. S. Krick, M. W. Clement, T. B. Hamilton, Benjamin McKeen, I. W. Geer, and P. F. Smith, Jr., and each of them, and their attorneys, agents, servants, associates, employees and all persons acting in aid of or in conjunction with them from

(a) Enforcing and continuing to enforce the payment of wages to employees of the Pennsylvania Railroad Company engaged in shop and mechanical work on a scale below that in force and effect on June 30, 1921, and from paying such wages; from refusing to recognize, accept and apply the classifications and seniority rights of such employees established by the

United States Railroad Administration and in force and effect on the Pennsylvania Railroad System on the 30th day of June, 1921; from continuing the piecework system of compensation and from paying wages on any basis other than the time consumed in the work; from enforcing and continuing to enforce the alleged rules and conditions of work established by the alleged agreements between the Pennsylvania Railroad Company or any department or division of the same with alleged representatives of the employees of the said Company engaged in shop and mechanical work elected as a result of any election purported to have been held upon the initiative and under the supervision of the Pennsylvania Railroad Company at any time in the years 1921, 1922 and 1923;

(b) From recognizing such alleged representatives of said employees alleged to have been designated as a result of such purported elections, from conferring with them about wages of the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work and about rules and conditions of work of such employees in the manner and for the purposes prescribed by the Transportation Act and from making agreements with such alleged representatives about such wages, rules and conditions of work;

(c) From participating in conferences, deliberations and proceedings of so-called Joint Regional Committees through any officer, representative or employee of the defendants; from paying any sums of money to any of the alleged representatives of the said employees alleged to have been designated in any of the elections purported to have been called and held by the Pennsylvania Railroad Company in 1921, 1922 or 1923 for expenses incurred or alleged to have been in-

curred by them in representing other employees in the shop and mechanical service of the Pennsylvania Railroad Company, or for any services rendered or alleged to have been rendered by them as such alleged representatives of such employees, and from paying any sums of money for the publication and circulation of alleged agreements or regulations purported to have been made with such alleged representatives and for the publication and circulation of the alleged by-laws of alleged organizations of such employees created by the Pennsylvania Railroad Company;

(d) From in any manner controlling, or attempting to control, or affect the designation of representatives by the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work to confer with the representatives of the said Company under the provision of the Transportation Act, and from establishing, applying or attempting to apply any electoral regions or divisions for such elections or rules to govern such elections and from conducting or participating in the conduct of elections to determine such representatives and from printing or distributing ballots for such elections and from paying for the printing or distributing of such ballots, rules or regulations for such alleged elections except in the manner and to the extent heretofore authorized or hereafter to be authorized by the Railroad Labor Board;

(e) From refusing to recognize System Federation No. 90 as an organization of the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work within the intent and meaning of the Transportation Act and from refusing in good faith to confer with System Federation No. 90 about the wages, rules and conditions of work of such employees,

and from refusing to submit all controversies about such wages, rules and conditions of work as are not agreed upon in such conferences to the Railroad Labor Board for decision, and the complainants pray for a mandatory injunction directing the defendant Pennsylvania Railroad Company, its officers and representatives, in good faith to consider all disputes as to wages, rules and working conditions of such employees now pending between the said Company and the said employees as hereinabove set forth, in conference with System Federation No. 90, its officers and representatives, and to recognize and deal with System Federation No. 90 as an organization of their employees engaged in shop and mechanical work and authorized to represent such employees within the meaning and intent of the Transportation Act;

That an injunction may be issued herein enjoining and restraining the defendants T. H. Davis, W. J. Hilton, Charles Mode, J. E. Cavey and C. G. Larson, their associates and all persons acting in conjunction with them, from holding themselves out as representatives designated by the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work to represent them in conference with the said Company and its officers on the subject of wages, rules and conditions of work of such employees and to represent them at hearings before the Railroad Labor Board under the provisions of the Transportation Act; from conferring with representatives of the said Pennsylvania Railroad Company about such wages, rules and conditions of work, from entering into agreements with the said Company, establishing such wages, rules and conditions of work and attempting to enforce the same upon the employees of the Company engaged in shop and mechanical work; from accepting any

sum or sums of money from the Pennsylvania Railroad Company or any of its officers or representatives in payment for services or alleged services rendered by them as such alleged representatives of the said employees for expenses or alleged expenses incurred by them as such representatives and from in any way hampering, hindering or obstructing the employees of the Pennsylvania Railroad Company engaged in shop and mechanical work from the free exercise of their rights and privileges under the Transportation Act and particularly their right to elect their own representatives to represent them in conferences with the carrier and at hearings before the Railroad Labor Board for the purposes, in the manner and with the force provided by the Transportation Act and from being so represented by System Federation No. 90 in which they hold membership;

That a temporary injunction be issued herein against the said defendants and each of them and their respective agents, representatives and attorneys restraining them as herein prayed and that upon the final order of this Court herein that the said defendants and each of them be perpetually enjoined and restrained in the manner and form as prayed for herein;

That a decree may be made ordering that an account be taken of all losses of earnings and other damages sustained for furloughed employees of the Pennsylvania Railroad Company, members of System Federation No. 90, sustained by them by reason of the unlawful refusal on the part of the said Company to re-employ them in accordance with their seniority rights as herein set forth and of all loses of earnings and other damages sustained by employees of the said Company, wrongfully discharged for their refusal to waive their legal rights as herein set forth, and that

the said Pennsylvania Railroad Company be adjudged to pay to such employees, their executors or administrators, the respective amounts of such losses of earnings and other damages which upon such accounting shall appear to be due to them and also all sums of money due to each member of System Federation No. 90 and each employee of the Pennsylvania Railroad Company engaged in shop and mechanical work or their and each of their executors or administrators from the said Pennsylvania Railroad Company for work performed by such employees for the said Company over and above the wages received by them for such work from the 1st day of July, 1921, and that the said Pennsylvania Railroad Company may be adjudged to pay to such employees, their executors or administrators the respective sums of money which upon such accounting shall appear to be due to them, and that pending such action the Pennsylvania Railroad Company its officers, attorneys, agents and servants be enjoined and restrained from removing, effacing or destroying any of the books, records, memoranda, entries or papers in the possession or under the control of the said Company relating to the subject matter of this suit, and particularly to the wages or other compensation paid by it to its employees employed in shop or mechanical work since the 1st day of July, 1921, the number of hours which such employees worked since the said day and other items and entries relating to the damage claims of such employees as above set forth.

That the complainants may have such other and further relief in the premises as the nature of the case shall require and as this Court may deem just and equitable.

May it please your Honorable Court to grant the complainants herein a Writ of Subpoena to be directed

to the said defendants herein named and each and every one of them at a certain time and under a certain penalty therein to be limited, personally to appear before your Honorable Court, and then and there, full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and abide by such order, direction and decree as may be made against them and each and every one of them as shall seem meet and agreeable to equity.

And may it please your Honors to grant unto the complainants the Peoples' Writ of Injunction as prayed for herein to be directed to the said Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, Elisha Lee, George L. Peck, E. T. Whiter, C. S. Krick, M. W. Clement, T. B. Hamilton, Benjamin McKeen, I. W. Geer, P. F. Smith, Jr., T. H. Davis, W. J. Hilton, Charles Mode, J. E. Cavey and C. G. Larson, restraining them and each of them respectively in the manner and form as prayed for in this Bill.

DAVID WALLERSTEIN,
Solicitor for Complainants,
817-818 Land Title Building,
Philadelphia, Pa.

MORRIS HILLQUIT,
DONALD R. RICHBERG,
Of Counsel.

UNITED STATES OF AMERICA,
STATE OF PENNSYLVANIA,
COUNTY OF ALLEGHENY, } *ss:*

N. PLUMMER GOOD, being duly sworn, deposes and says: That he is the President of the complainant Pennsylvania Railroad System and Allied Lines Fed-

eration No. 90, and one of the individual complainants herein; that he is familiar with the facts set out in the foregoing Bill of Complaint; that he has read the said Bill of Complaint and knows the contents thereof, and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to such matters he believes it to be true.

N. PLUMMER GOOD.

Subscribed in my presence and sworn to before me this 26th day of October, 1923.

GERTRUDE M. KELLEY,
(Seal) *Notary Public.*
My commission expires March 7, 1925.

EXHIBIT "A".

PENNSYLVANIA SYSTEM.
CENTRAL REGION.

May 26, 1921.

Decision No. 119 of the United States Railroad Labor Board ceases and terminates on July 1, 1921, the rules, working conditions and agreements in force under the authority of the United States Railroad Administration.

The Labor Board directs that the management and employees designate and authorize representatives to confer and decide rules and working conditions, such conferences to begin at the earliest possible date. Undue delay on the part of the carrier may cause extension of rules, working conditions and agreements

beyond July 1st. Undue delay on the part of employees may cause termination at an earlier date.

The Labor Board laid down sixteen principles to be kept in mind in negotiations between the management and employes. Principle No. 15 reads as follows:

> "The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice."

In order to fairly determine the employe's choice of representation, a vote will be taken by letter ballot as set forth below.

This vote is to be taken without reference to or consideration of the membership or non-membership in any organization. Employes are free to vote their choice according to their own interests and without prejudice. Voting will be confined to active employes.

The employes under each Master Mechanic including shop craft employes in other departments of the same division or territory will vote for three employe representatives from the craft in which they are employes to constitute a Local Craft Committee. If empowered by a majority vote of employes the Local Craft Committee, etc., will select from among their number a Local Chairman, who will be a member of the Division Committee, who will speak and act for the employes before the Division Officers.

The Local Chairman of each craft in this region

will elect from among their number one craft representative who will be a member of the Regional General Committee. The Regional General Committee will speak and act for the employes before the General Superintendents and General Manager.

Two or more votes in one envelope and two or more votes from any one employe will not be counted.

Enclosed are three envelopes. Ballot, when filled out, should be placed in small envelope marked "Official Ballot" and envelopes sealed. This envelope should then be placed in the envolope having in upper left hand corner blank spaces for name, occupation, location and division of the employe filling out the ballot. These blank spaces must be filled in and this envelope should then be sealed and placed in the large envelope addressed to Superintendent, and mailed by Railroad Service or United States Mail.

Count of ballots will begin Monday, June 13, 1921, at 9 A. M., Eastern Time, Room 720, Pennsylvania Station, Pittsburgh, Pa., in the presence of representatives of the management and such representatives of the employes as desire to be present.

BALLOT.

I hereby cast my vote for the employes shown below to act as my representatives on ..... Division, in connection with negotiations concerning disposition of the matter covered in Decision No. 119, United States Railroad Labor Board.

Exhibit A.

CHOICE OF REPRESENTATIVE COMMITTEE.

VOTE FOR THREE *

Name of Committeeman voted for.

.....

Occupation . . ..

Location . . ..

Division . . ..

Name of Committeeman voted for.

.....

Occupation . . ..

Location . . ..

Division . . ..

Name of Committeeman voted for.

.....

Occupation . . ..

Location . . ..

Division . . ..

Monday, June 6, 1921, is fixed for the day of the election and ballots must be forwarded not later than that date by train service or by United States Mail to the Superintendent, who will check against the payrolls to see that all those voted are employees. Ballots with the poll list or roster will then be promptly forwarded by registered mail to the General Manager, who will arrange for the count to begin on Monday, June 13, 1921, at 9 A. M., Eastern Time, Room 720, Pennsylvania Station, Pittsburgh, Pa.

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* Give in each case the Name, Occupation, Location and Division of the person for whom you are voting to represent you.

ANSWER OF DEFENDANTS.
(Filed Dec. , 1923.)

To the Honorable, the Judges of the District Court of the United States for the Eastern District of Pennsylvania:

The Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, Elisha Lee, George L. Peck, E. T. Whiter, C. S. Krick, M. W. Clement, T. B. Hamilton, Benjamin McKeen, I. W. Geer, P. F. Smith, Jr., T. H. Davis, W. J. Hilton, Charles Mode, J. E. Cavey and C. G. Larson, the defendants herein and each of them, without waiving any objections and exceptions to the Bill and to all the averments therein set forth, specifically aver:—

That the complainants have no authority or legal power to file the Bill.

That there is no right or cause of action in equity disclosed by the Bill and the averments therein.

That no conspiracy is disclosed by the Bill and the averments therein.

That no remedy in equity exists for or arises from the charge or averments of conspiracy upon the facts set out in the Bill.

That the complainants disclose in their Bill no ground for the relief therein prayed.

That there is an adequate remedy at law for the acts alleged by the complainants in their Bill to have been done by the defendants; and

Without waiving any of the foregoing averments, and especially insisting thereon with like effect as if they were asserted in a plea of abatement, a motion to dismiss the Bill or by a demurrer to the Bill, the defendants make answer to the averments of the several paragraphs therein, or so much thereof as

they are advised they are required to make answer to, as follows:

First: Defendants have no knowledge or information as to the averments of paragraph 1 of the Bill, and so far as they are material demand proof thereof.

Second: Defendants admit the averments of paragraph 2 of the Bill, except that they aver C. S. Krick is now Vice-President of the Eastern Region.

Third: Defendants deny the allegations of paragraph 3 of the Bill, save that the action set out in the Bill involves an alleged controversy arising under the laws of the United States.

Fourth: The provisions of section 301, 302, 303 and 307 of the Transportation Act are not accurately described in paragraph 4 of the Bill and defendants refer to them for a correct statement of the provisions thereof.

Fifth: The defendants admit the averments of paragraph 5 of the Bill.

Sixth: Defendants deny that prior to December 8, 1917, the System of Railroads now known as the Pennsylvania Railroad System was operated by the defendant, The Pennsylvania Railroad Company. Defendants admit that that Company employed a large number of workers. They have no knowledge of the functions of organizations described in paragraph 6, nor have they any knowledge of the remaining averments of paragraph 6.

Seventh: Defendants admit that they recognized

the organizations of employes engaged in the train service prior to December 28, 1917. They also admit that prior to said date the terms of employment were fixed by The Pennsylvania Railroad Company but deny that such terms of employment were unfair and unsatisfactory. The defendants have no knowledge of the other averments in paragraph 7.

Eighth: Defendants admit the averment in paragraph 8 that the railroads of the United States, including the defendant The Pennsylvania Railroad Company were taken over by the United States Government and operated through the United States Railroad Administration and the Director General of Railroads, and that General Order No. 8 was issued by the Railroad Administration as averred. They have no knowledge of the remaining averments of said paragraph 8.

Ninth: Defendants have no knowledge of the averments contained in paragraph 9 of the Bill, and so far as they are material demand proof thereof.

Tenth: Defendants have no knowledge of the averments contained in paragraph 10 of the Bill, and so far as they are material demand proof thereof.

Eleventh: Defendants have no knowledge of the averments contained in paragraph 11 of the Bill, and so far as they are material demand proof thereof.

Twelfth: Defendants have no knowledge of the membership of System Federation No. 90, as averred in paragraph 12. Prior to May, 1921, defendant, The Pennsylvania Railroad Company conferred with System Federation No. 90 with reference to the questions

arising between it and employees engaged in shop or mechanical work. Subsequent to Decision No. 119, of the Labor Board directing carriers to negotiate with their employees, defendant declined to further negotiate with System Federation No. 90.

The defendants have no knowledge of the remaining averments of said paragraph.

Thirteenth: Defendants, in answer to paragraph 13, admit that during the period of Federal control and until May, 1921, conferences were held with the officers of System Federation No. 90, which was recognized during said time as the authorized representative of some of the employees.

Fourteenth: Defendants have no knowledge as to the allegations in paragraph 14, and so far as they are material demand proof thereof.

Fifteenth: Defendants admit the issuance of General Order No. 27 and the supplement thereto, as averred in paragraph 15 and the averments in regard to the termination of the piece work system under Federal control and the entry of an agreement known as the National agreement, as set out in the said paragraph.

Sixteenth: Defendants admit the averments of paragraph 16 of the Bill.

Seventeenth: Defendants admit the averments of paragraph 17 of the Bill, except as to the conditions upon which the railway workers, including the members of System Federation No. 90 and employees of the Pennsylvania Railroad System engaged in shop and mechanical work, decided to continue to work, of which they have no knowledge.

Eighteenth: Defendants admit the passage of the act known as the Transportation Act, and that thereunder the Pennsylvania Railroad System was returned to its owners. They have no knowledge of the conditions averred to exist prior to Federal control, or of the reasons why the Transportation Act was enacted by Congress. The defendants admit the remaining averments in paragraph 18.

Nineteenth: Defendants admit the averments of paragraph 19 of the Bill, except those with reference to the enactment of the Transportation Act.

Twentieth: Defendants admit the averments of paragraph 20 of the Bill, but deny all inferences or conclusions of fact or law drawn therefrom.

Twenty-first: Defendants admit the averments of paragraph 21 of the Bill.

Twenty-second: Defendants admit that at the time of the decision No. 2 by the Railroad Labor Board the rules, working conditions and agreements established by the United States Railroad Administration on the railroads of the country, including the Pennsylvania Railroad, were in full force and effect, and that it recognized or accepted them as in effect at that time.

Defendants aver that the Labor Board had not acquired jurisdiction over the National Agreement when Decision 2 was rendered, and that the Board had no power or right to assume jurisdiction thereof. Defendants deny all the inferences or conclusions of fact or law alleged in said paragraph.

Twenty-third: Defendants admit that a telegram

from N. P. Good, President of System Federation No. 90, under date of August 30, 1920, was received by C. S. Krick, General Manager, Eastern Region, R. E. McCarty, General Manager, Central Region, T. B. Hamilton, General Manager, Northwestern Region, I. W. Geer, General Manager, Southwestern Region, and P. F. Smith, Jr., Works Manager, Altoona Works. They have no knowledge of such telegram, however, having been received by Ralph Peters, General Manager, Long Island Railroad Company, Pennsylvania Station, New York City, New York.

Twenty-fourth: Defendants admit that a letter dated September 1, 1920, was addressed to N. P. Good, President, System Federation No. 90, but deny that it is correctly quoted in paragraph 24, in that the clause immediately following the word "concerned" appearing in the second paragraph "including the validity and binding force of the National Agreement and their duty to apply and operate under the same unless or until modified in the manner provided by the Transportation Act," does not occur therein.

Twenty-fifth: Defendants admit that in the month of December, 1920, the Labor Board took up the consideration of the undecided portion of the dispute between the carriers and organizations of their employees referred to in its decision No. 2 above mentioned, but deny all the remaining averments of paragraph 25.

Twenty-sixth: Defendants admit the averments of paragraph 26.

Twenty-seventh: Defendants admit that an addendum to Decision No. 119 was promulgated on the

27th day of June, 1921, by the Labor Board. They deny that the Pennsylvania Railroad was one of the carriers which had failed to reach an agreement with its employees. They deny that the employees engaged in shop mechanical work on the Pennsylvania Railroad Company were or now are entitled to receive the wages and to come under conditions in effect prior to July 1, 1921.

Twenty-eighth: Defendants deny the allegations of paragraph 28.

Twenty-ninth: Defendants deny the allegations of paragraph 29, and all the deductions, inferences and charges attempted therein to be drawn therefrom.

Thirtieth: Defendants, in answer to paragraph 30, admit that they refused to recognize System Federation No. 90 and its Executive Council as representatives of the employees of the Pennsylvania Railroad Company and that a ballot was prepared. They deny that this action was in furtherance of any plan or conspiracy and that the System Federation No. 90 had any legal authority or power to represent the employees of the Railroad Company.

Thirty-first: Defendants admit the averments as to form of the ballot as alleged in paragraph 31 and the rules with respect to the use thereof. They deny that any employees were temporarily laid off or furloughed. They deny that the plan of voting, the form of the ballot, and the rules with respect thereto were unauthorized by law or in violation of any rights of the employees.

Thirty-second: Defendants admit the averments

of paragraph 32 except that there were any irregularities or illegalities appearing on the ballot, or that the use thereof was unauthorized by law or in violation of the rights of the employees.

Thirty-third: Defendants admit the averments in paragraph 33 as to the information submitted by the Railroad Company to the Labor Board and as to the election in the Southwestern Region, and defendants aver that in the subsequent elections in that region and in the other regions of the System of the Pennsylvania Railroad Company, held under the rules and regulations promulgated by it, a very large majority of the shop craft employees eligible to vote cast their votes for individual employe representation, and thus adopted and approved the said rules and regulations. The defendants have no knowledge of the alleged election conducted by System Federation No. 90.

Thirty-fourth: Defendants deny that they entered into any conspiracy with any one. They dealt with the proper and legally chosen representatives of the employees of the Railroad Company in the matters referred to in paragraph 34, in and only in and under the full exercise of their respective legal rights, and defendants deny any allegations to the contrary and all inferences or deductions attempted to be made therefrom in said paragraph set forth.

Thirty-fifth: Defendants admit that the officers of the Pennsylvania Railroad Company designated to handle labor matters met with the Regional General Committee of the employees. They deny the allegation that such meetings were not conferences between the carrier and its employees as contemplated

in the Transportation Act, but aver on the contrary that these Regional Committees, elected by their employees constituents, were the duly designated and authorized representatives of the employees. Defendants deny the allegations that the agreements between the railroad and the representatives of its Shop Craft employees were inferior to those established by the United States Railroad Administration and the Railroad Labor Board, and that they were unjust, unreasonable, iniquitous and oppressive, but aver on the contrary that the regulations, rules, wages, rate schedules and classification for the government of the employes, mechanics, helpers and apprentices in the various regions are better, more liberal, just and fair than those established by the Labor Board. Defendants deny that the piece work system is destructive to the standards of shop conditions theretofore prevailing on the Pennsylvania Railroad System and resulted in substantial reductions in the earnings of employees. Defendants deny all other averments of paragraph 35.

Thirty-sixth: Defendants deny all the averments of paragraph 36.

Thirty-seventh: Defendants admit the averments of paragraph 37 as to the reduction of the number of employees except as to certain inaccuracies in numbers, but deny all the other allegations therein made.

Thirty-eighth: During the latter part of the year 1921, the shop craft forces were increased to take care of the increase in business. The employees who returned to the service were offered employment where the railroad had vacancies and when employed were paid the wages for the work performed under the con-

ditions, the rules and regulations agreed to between the representatives of the employees and the Railroad Company, properly and legally established and not fraudulently or unlawfully, as alleged in paragraph 38. The employees who returned to the service were required to designate whether they were willing to accept the conditions of employment that were offered them. Defendants deny that such employees who refused to accept the conditions of employment offered were deprived of the benefit of any legal and contractual rights and they further deny that the persons named in paragraph 38 were illegally dismissed—but aver they refused to accept employment under the rules and regulations and upon the terms and conditions established as above set out; and the defendants deny that there is any right of action to proceed in equity for the recovery of damages in loss of earnings or otherwise, alleged to have been suffered, as averred in said paragraph, and aver that the complainants have a full and adequate remedy at law for the assertion of any such claims.

Thirty-ninth: Defendants have no knowledge as to members of System Federation No. 90 who refused to accept employment under the rules and regulations, wages and conditions duly established. They deny that any employees were unlawfully discharged by the defendant railroad company in violation of any agreement, and that any of its employees have been deprived by it of any wages to which they were or are entitled, or have sustained any damages by or through any act of the defendants, and they again aver that even if such wages or damages are the subject of any legal claims, such claims cannot be asserted or recovery had therefor in this or any other proceeding in equity,

and that the complainants have a full and adequate remedy at law for the assertion of such claims.

Fortieth: Defendants have no knodledge of the averments of the action taken by members of System Federation No. 90 as to reemployment, as averred in paragraph 40. They deny all the other averments thereof.

Forty-first: Defendants deny that any of the acts mentioned in paragraph 41 were illegal, but on the contrary aver that the elections and agreements as to wages and working conditions were in accordance with the provisions of the Transportation Act.

Forty-second: Defendants deny that any conspiracy existed between the Pennsylvania Railroad Company and the employees named in paragraph 42, and further deny all the other allegations thereof.

Forty-third: Defendants admit that System Federation No. 90 protested against the action of the Railroad Company, as averred in paragraph 43, and deny the remaining averments thereof.

Forty-fourth: Defendants admit that certain of the Pennsylvania Railroad Company's officers appeared before the Labor Board at hearings conducted in July, 1921, with respect to a dispute over the election for representatives of shop craft employees, at which the officers of System Federation No. 90 and the Railway Employees Department, American Federation of Labor were present. They also admit that the United States Railroad Labor Board, under date of July 26, 1921, rendered a decision known as No. 218, and that the quotation appearing under this paragraph is a part of said decision.

Forty-fifth: Defendants deny that decision 218 was mandatory and binding upon the Pennsylvania Railroad Company. Defendants admit the remaining averments of paragraph 45.

Forty-sixth: Defendants admit the averments of paragraph 46, except the allegation that the methods pursued and the course adopted by the Pennsylvania Railroad were unlawful.

Forty-seventh: Defendants have no knowledge of the motives which induced the action alleged to have been taken in paragraph 47.

Forty-eighth: Defendants have no knowledge as to the number of members of System Federation No. 90 nor as to the number thereof that suspended work when the strike on the Pennsylvania Railroad was called. They admit that a strike of the shop craft employees on the Pennsylavnia System was called when the Company refused to hold a new election as ordered by the Labor Board in its decision No. 218, rendered July 26, 1921, but aver that the persons who went on the strike abandoned their positions as employees of the Pennsylvania Railroad Company. Defendants deny all the other allegations of paragraph 48.

Forty-ninth: Defendants have no knowledge of the averments of paragraph 49.

Fiftieth: Defendants deny that the Pennsylvania Railroad has, without agreement on the part of its shop craft employees, reduced the wages of such employees, but on the contrary aver that conferences were held with its employees through their legally chosen representatives in the manner provided in the

Transportation Act and agreements reached as to wages, classifications, rules, regulations and working conditions. They deny that the employees described in paragraph 50 are entitled to receive any wages or earnings from the defendant Railroad Company, and that it is indebted to them in any sum whatsoever, and again aver that if such wages or damages are the subject of any legal claims, such claims cannot be asserted or recovery had therefor in this or any other proceeding in equity, and that the complainants have a full and adequate remedy at law for the assertion of such claims.

Fifty-first: Defendants deny all the allegations of paragraph 51, and specifically aver that the complainants are not entitled in this or any other proceeding in equity to maintain an action for the recovery of any amounts claimed by them, and aver that there is an adequate remedy at law for any claim based upon the allegations of said paragraph.

Fifty-second: Defendants admit that they have the payrolls, books of accounts, and records of former employees, but they deny that such employees are entitled to reemployment under seniority rights, contrary to the provisions of the present regulations negotiated between the representatives of the employees and the defendant Railroad Company.

Fifty-third: Defendants deny the allegations contained in paragraph 53, and aver on the contrary that the employees of the Pennsylvania Railroad Company through their legally chosen representatives, negotiated wages, rules and working conditions which are mutually satisfactory. They specifically deny that

the complainants have no adequate remedy at law, as averred in paragraph 53.

Fifty-fourth: Defendants deny that the methods of selecting employee representatives on the Pennsylvania Railroad System are at variance with the provisions of the Transportation Act, as alleged in paragraph 54, and aver, on the contrary, that the representatives of the employees are duly designated and authorized representatives in accordance with the terms of the Transportation Act, and that the negotiations such employee representatives have conducted with the defendants are legal and that System Federation No. 90, and the employees described in paragraph 54 have no cause or right of action as set out in said paragraph.

Fifty-fifth: Defendants deny that complainants are without remedy except in a court of equity, that they are entitled to any preliminary or temporary injunction, or final injunction, or any other remedy, order or relief as alleged in paragraph 55 or as prayed for in the sub-sections (a), (b), (c), (d) and (e) thereof.

Wherefore the defendants pray that the Complainants' Bill be dismissed, with costs.

JOHN HAMPTON BARNES,
Solicitor for Defendants

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } *ss*:

C. S. KRICK, being duly sworn according to law, deposes and says that he is vice-president of the Pennsylvania Railroad Company, one of the defendants

named in the foregoing Answer, and that the facts set forth therein are true and correct.

Sworn to and subscribed
before me this 14th day of December, 1923.

C. S. KRICK.

N. SPERING,
(Seal) *Notary Public.*
My commission expires April 1, 1927.

Before HON. OLIVER B. DICKINSON, *J.*

Philadelphia, Pa., Monday, January 28, 1924.

Present:

DAVID WALLERSTEIN, Esq.,
MORRIS HILLQUIT, Esq., and
DONALD R. RICHBERG, Esq., representing the Complainants.

JOHN HAMPTON BARNES, Esq., representing the defendants.

Transcript of Testimony, Rulings of the Court, and Exceptions.

MR. BARNES: Before we proceed with the taking of the proofs, I want to put on the record a formal motion to dismiss the Bill. Such a motion is contained in the Answer.

(Discussion, off the record.)

THE COURT: The defendant, having exercised its right to set up by way of Answer, by incorporating in the Answer the same grounds of defense upon which

the motion to dismiss is based, the trial Judge, in the exercise of the discretion committed to him by the Equity Rules, declines at this time to hear the motion to dismiss, or the legal merits of the same question raised by the Answer, but will dispose of it after the conclusion of the present trial hearing, which is on Bill, Answer and Proofs. Exception allowed to the respective parties accordingly.

EVIDENCE ON BEHALF OF THE COMPLAINANTS.

NEWTON PLUMMER GOOD, having been duly sworn, was examined and testified as follows.

By MR HILLQUIT:

Q. You are one of the complainants in this action?

A. I am.

Q. Where do you reside?

A. At Pitcairn, Allegheny County, Pennsylvania.

Q. What is your occupation?

A. Machinist by trade and at the present time president of System Federation No. 90.

Q. When you say System Federation No. 90, do you mean the Pennsylvania Railroad System and Allied Lines Federation No. 90?

A. I do.

Q. That is the official title of it?

A. Yes, sir.

Q. And that is one of the complainants in this action likewise?

A. It is.

Q. Have you ever been in the active service of the defendant, the Pennsylvania Railroad Company?

A. I have.

Q. In what capacity?

A. As a locomotive fireman, and as a machinist.

Q. And during what periods of time?

A. I was in the service at intermittent periods beginning in 1902 and terminating, I think, early in 1904 or late in 1903. I re-entered the service then on the 24th of December, 1904, as a locomotive fireman, remaining in such service until August, 1905, when I was transferred into the machine shop at the Pitcairn car shops and remained continuously in the service until February of 1919, when I was granted a leave of absence as a representative of the shop craft.

Q. During the last years of your periods of employment did you work as a machinist?

A. I did. I might say, though I was granted a furlough in February, 1919, my service with the company continued as an employee until July 25, 1921.

Q. For what reason was the furlough granted to you?

A. As a representative of the shop craft employees, machinists.

Q. Are you a member of any labor organization?

A. I am a member of the International Association of Machinists.

Q. What is the International Association of Machinists?

A. It is a labor union having headquarters in Washington, D. C., and is made up of local lodges scattered throughout the United States, Canada, Mexico and other countries.

Q. And were you a member of one of the lodges of the International Asociation of Machinists?

A. I am a member of Lodge No. 1038 located at Pitcairn, Pennsylvania.

Q. How long have you been a member of that lodge?

A. Since early in 1918, at the time of its constitution.

Q. Were you a member of that Lodge and International Association of Machinists on the 8th day of July, 1918?

A. I was.

Q. And on that day where were you?

A. I was in Altoona, Pennsylvania.

Q. For what purpose?

A. As a delegate to a convention called in that city.

Q. And by whom was that convention called?

A. The call was sent out by John Schmidt, International Vice-President of the Brotherhood of Boilermakers, and George A. Nolty, International Vice-President of the Brotherhood of Car Men, for the purpose of forming a federation of six crafts.

Q. How many delegates were present at that convention besides yourself?

A. 170 besides myself.

Q. Making a total of 171?

A. Your are right.

Q. What were the organizations that these delegates represented?

A. The International Association of Machinists, the International Brotherhood of Blacksmiths, Drop Forgers and Helpers of America.

Q. What was this organization?

A. An organization of blacksmiths, their helpers and apprentices. The International Brotherhood of Boilermakers, their helpers and apprentices, of America.

Q. Representing what craft?

A. The boilermakers and their helpers and apprentices. The Brotherhood of Electrical Workers,

representing the electrical workers and their helpers, of America. The International Sheet Metal Workers Alliance, which is composed of sheet metal workers, their helpers and apprentices. The Brotherhood of Railway Car Men of America, composed of car men, their helpers and apprentices.

Q. What was the collective name or designation by which these various crafts were known in the industry?

A. The Shop Craft Organization.

Q. What was the basis of representation at that convention?

A. One delegate from each lodge.

Q. So that the 171 delegates represented 171 lodges?

A. Yes, sir.

Q. Of the six national labor organizations you have enumerated. Is that correct?

A. That is right.

Q. And from within what territory did they come?

A. Within the twelve states and the District of Columbia, which are traversed by the Pennsylvania Railroad.

Q. Will you name the states?

A. New York, New Jersey, Delaware, Maryland, Pennsylvania, Virginia, West Virginia, Ohio, Indiana, Kentucky, Illinois, Michigan and the District of Columbia. I believe that is all. Thirteen including the District of Columbia.

Q. So that this convention was a convention of delegates from local labor organizations within the territory or operation of the Pennsylvania Railroad Company?

A. Yes, sir.

Q. And did all of these local lodges represent employees of the Pennsylvania Railroad Company?

A. That is right.

Q. In the shop and mechanical crafts?

A. That is right.

Q. How long was the convention in session?

A. From the 8th to the 12th of July, 1921, inclusive.

Q. What did it do?

A. Met on the morning of the 8th of July and organized for the transaction of business, including the establishment of regulations governing the affairs of the shop crafts, such as the appointment of committees, by-law committees, rules committees and various other committees.

Q. Was a chairman elected?

A. A Chairman and Secretary were elected.

Q. And committees, you say, among others the committee on by-laws?

A. The committee on by-laws.

Q. Did that committee report?

A. The committee reported.

Q. Were you present when the report was made?

A. I was present.

Q. And when it was adopted?

A. Yes, sir.

Q. And was a constitution adopted by the convention upon the report of such committee?

A. It was, and after discussion.

Q. Have you a copy of the constitution of by-laws so adopted?

A. I have.

MR. HILLQUIT: I offer in evidence the con- and by-laws of the complainant organization.

(Objected to as irrelevant to this issue.)

THE COURT: Under the Equity Rule we will

admit it subject to the objection, and dispose of the question of its admissibility along with the other questions in the cause and further, subject to the right of defendant at any time to move to strike out. Exception is allowed to the defendant in so far as the evidence is admitted and to the plaintiff in so far as it is restricted.

(Constitution and by-laws just referred to marked "Complainants' Exhibit No. 1, T. R. P.")

By Mr. Hillquit:

Q. I show you the constitution and by-laws of System Federation No. 90, Complainants' Exhibit No. 1, and ask you what was the official title of the organization created at that convention?

The Court: Your objection goes to the substance. You were not objecting on the ground that the offer was premature?

Mr. Barnes: No, sir; nor as to the form of its printing, or anything else. It only goes to the admissibility of this as a thing, and to any questions which refer to it in explanation.

A. Pennsylvania Railroad System and Allied Lines Federation No. 90.

Q. And at that convention were officers of the organization elected?

A. Yes, sir.

Q. What officers?

A. A president, a secretary-treasurer and four vice-presidents.

Q. Were you one of the officers thus elected?

A. I was.

Q. What office were you elected to?

A. Fourth vice-president.

Q. Was there a statement made at the convention of the number of members represented by each of the lodges at the convention?

A. Yes.

Q. And were the figures totalled up?

A. They were.

Q. How many members were represented by the delegates at that convention in Altoona?

A. On the adjournment of the convention, approximately 30,000.

Q. And did System Federation No. 90 thus created set up offices, and did it from that day transact business at such organization?

A. It did transact business. For a time the officers transacted business of the organization from their homes due to the fact that the revenue on which they were to operate was derived from a per capita tax, and it took some time for that to be reflected in to the treasury to make it possible for them to establish headquarters.

Q. Did System Federation No. 90 hold any convention after the Altoona convention?

A. Yes, a convention in Columbus, Ohio, in 1919 and another in Newark, New Jersey, in 1920.

Q. And were the constitution and by-laws of the System Federation amended at any of those conventions?

A. They were amended at both of the conventions.

Q. And what was the last?

A. The last amendment was at the Newark, New Jersey, convention in 1920.

Q. Were you present at that convention?

A. I was.

Q. And were you an officer of System Federation No. 90 at that time?

A. I was.

Q. And did you hear a discussion with respect to the amendments proposed?

A. I did.

Q. And do you know whether this is a correct copy of the amended constitution and by-laws of System Federation No. 90?

A. That is a correct copy.

Q. And that is the last constitution?

A. That is right.

Q. And the constitution and by-laws now in force?

A. It is.

MR. HILLQUIT: I offer that in evidence.

(Objected to for the same reason,—as irrelevant to this issue. Same ruling.)

(Constitution and by-laws just offered in evidence marked "Complainants' Exhibit No. 2, T. R. P.")

By MR. HILLQUIT:

Q. At the convention in Newark, New Jersey, were officers elected by System Federation No. 90?

A. They were.

Q. Who were the officers elected?

A. I was elected president. H. A. Bixler was re-elected secretary-treasurer, Mr. Bixler being a member of the Sheet Metal Workers. Mr. L. B. Webb, a member of the Electrical Workers, was elected first vice-president. Mr. A. J. Berger, of the Brotherhood of Railway Car Men, and General Chairman thereof, was elected second vice-president. R. J. Dorson, of Olean, employed in the shops of the Pennsylvania Railroad at Olean, was elected third vice-president. N. M. Jones, of the boiler makers, employed in the shops of the Pennsylvania Railroad at Harrisburg,

Pennsylvania, was elected fourth vice-president. I might say that the various other officers I mentioned were from the different points. I failed to give you that. I stated I was from Pitcairn.

Q. What was the date of the convention?

A. I do not remember the exact date. It was in July.

Q. 1920?

A. 1920.

Q. And Bixler, Weller, Dorson, Myer, Burger and Woomer, you mentioned as having been elected general officers of your System Federation No. 90, are the same persons named as complainants in this action, are they?

A. Yes.

Q. Was there any election held by System Federation No. 90 after the convention at Newark, New Jersey?

A. There was not.

Q. And are the officers elected at Newark, New Jersey still functioning as officers of System Federation No. 90?

A. They are.

Q. Those constitution and by-laws provide for an annual convention?

A. They do.

Q. Will you state why no conventions were held after July, 1920?

A. The convention date was changed in the laws of 1920 from July to October. The convention in 1921 would have been held in October of that year. We were facing a rather critical period at that time. Our right of representation—the employees of the Pennsylvania Railroad—had been questioned. The officers of the organization, that is, the general chairmen and

myself as president of the Federation, together with other officers, had been dismissed from the service. Our very existence was being jeopardized and the conservation of our funds was highly essential. In addition to that we were given to understand, in an indirect way, that our delegates as some points at least would experience difficulty, if not be refused entirely, the privilege of getting off to attend the convention. Consequently, the question was submitted to the membership, and the convention date postponed indefinitely.

Q. By a general vote of the membership?

A. Yes.

Q. At the convention at Newark, New Jersey, was an Executive Counsel elected?

A. It was.

Q. Composed of the persons you named above?

A. No.

Q. Composed of whom, then?

A. Composed of Mr. Bixler and myself, as president, and secretary-treasurer at the System Federation, and the general chairman of each of the six affiliated craft organizations.

Q. And are the persons thus elected still in office?

A. No, there have been one or two changes, substitutions, in accordance with the law.

Q. Your Executive Council consists, as I understand it, of the president and the secretary-treasurer, and those are the same that were elected at the Newark convention. Is that right?

A. Yes.

Q. And all six representatives of the six allied crafts, coming and going, for System Federation No. 90,—they are elected by the respective organizations?

A. That is right.

Q. And in those offices there have been some changes since 1920. That is correct?

A. That is correct.

Q. Is your Executive Council complete at this time, composed of the eight members?

A. It is.

Q. And functioning as such?

A. It is.

Q. What was the source, or what is the source, of the revenue of System Federation No. 90?

A. A per capita tax from the district organizations of each craft, or system organizations of each craft, originally 3 cents per member monthly and subsequently and at the present time 5 cents per member.

Q. How was such per capita tax paid to you and by whom?

A. Paid into the System Federation by the Financial Secretary of the system craft organizations.

Q. Does each of the six crafts represented in System Federation No. 90 have a separate organization within the territory of operation of the Pennsylvania Railroad Company. Is that correct?

A. That is right.

Q. And it is such organization that paid the System Federation No. 90 the per capita tax on its members?

A. That is right.

Q. What was the amount of the per capita tax which System Federation No. 90 thus received at the beginning of its existence?

A. Beginning with the tax paying period, when the treasury was empty, it reached, when the tax was paid in on the membership enrolled on the adjournment of the 1918 convention in Altoona, about $900, and increased from that time until the maximum in-

come per capita was approximately $3000 per month.

Q. When was that maximum reached?

A. Late in 1920.

Q. And that income of $3000 per month represented the total membership of how many?

A. About 60,000. That was what was paid. It was in excess of that. The membership at that time was in excess of 60,000.

Q. That was the end of 1920?

A. Late in 1920.

Q. And what was the situation with respect to the per capita tax and membership in the early part of 1921?

A. In the early part of 1921 there was a slight falling off in the membership due to a sweeping reduction in the force made by the management and the scattering of some of the membership.

Q. How many members did System Federation No. 90 have in the early part of 1921?

A. In the early part of 1921 it would be very slightly less than the original maximum period of 60,000. As I said before, there was a slight scattering of the membership which would reduce that sum, but it would be negligible.

Q. Would it be then in the neighborhood of 60,000 members?

A. Yes. It would not fall much below that.

Q. Do you know what the total number of shop craft employees on the Pennsylvania Railroad Company were at that time, in the early part of 1921?

A. That was after the reduction. The maximum period was in 1920.

Q. Do you know what it was in 1920?

A. So far as we could ascertain, about 70,000.

Q. What was the source of your information?

A. A check-up made at our different points and the figures later given out.

Q. By whom?

A. By the officials of the railroad.

Q. Then, at the time you had about 63,000 members there were altogether employed on the road about 70,000?

A. There is possibly a slight discrepancy there. That is not clear.

Q. I want to clear it up. You say the membership toward the end of 1920 was 60,000 or 63,000?

A. I said the per capita tax of $3,000 represented a payment on 60,000. Our actual membership was between 62,000 and 63,000. You will understand that there is always in a per capita tax organization a fluctuation, going and coming all the time. It does not represent always the total membership.

Q. You say when there were between 62,000 or 63,000 members, the total number of shop craft employees on the road was about 70,000. Is that correct?

A. Yes.

Q. When you had 60,000 in the early part of 1921, what was the total number of shop craft employees on the road?

A. The total number of shop craft employees on the road based on our figures remained approximately the same. Based on the furlough, using the same source of information, which was the figures given out by the company, early in 1921 it was slightly more than 35,000 due to a reduction of approximately 50 per cent.

Q. Figuring all the shop craft employees of the Pennsylvania Railroad, including those on furlough, what percentage of the total force did the System Federation No. 90 represent in 1920 and in the early part of 1921?

A. Well, on the different checks we made on that, it would range around 85 per cent. and in excess during the entire period, after we had established the organization, of 75 per cent.

Q. During the period that the Pennsylvania Railroad System was operated by the United States Railroad Administration, did representatives of System Federation No. 90 negotiate with the management of the road on questions of dispute and grievances?

A. They did.

Q. In such negotiations who represented System Federation No. 90?

A. The president of System Federation and the general chairman of respective crafts. In other words, the Executive Council and the various assistant general chairmen of these organizations.

Q. And you were one of the Executive Council at the time?

A. Yes—no, I was not one of the Executive Council. I was vice-president.

Q. Vice-president?

A. I was vice-president of the organization.

Q. When did you become President?

A. And an officer of the district organization and of machinists, as a result of which I frequently was in conference and assisted in the representation.

Q. When did you become president of System Federation No. 90?

A. In 1920.

Q. And were negotiations between System Federation No. 90 and the management of the road continued after that date?

A. Yes.

Q. Until when?

A. There was some correspondence. There were

early meetings in 1921, and correspondence carried on with respect to grievances arising prior to that time up until July 21, 1921.

Q. And who represented the management of the road in such negotiations and dealings?

A. Usually we met with the general managers, or their assistants, or the Superintendents of the Labor and Wage Bureaus in each of the regions. In the Altoona works, I might say it would be the works manager.

Q. Will you please state with what representatives of the railroad management of System Federation No. 90 was in the habit of negotiating during the period of Federal control first?

A. In the beginning the lines west officers usually met with General Manager McCarthy, and H. K. Brady, superintendent of Labor and Wage Bureau of lines west of Pittsburgh and Erie. For lines east, I believe it was General Manager O'Donnell first, succeeded by General Manager Krick and with Mr. Enochs, superintendent of Labor and Wage Bureau, lines east. Various other officers, however, were conferred with.

Q. After the period of Federal control, who represented the road in such associations?

A. During that interval the road had been divided, or subsequent to the expiration of Federal control, the termination of it, the road was divided into four regions and the Altoona Works, and a General Manager of each of those regions was appointed. The Works Manager at Altoona Works. The superintendents of the Labor and Wage Bureau were established, and we met with these officials in each of these regions and the Altoona Works with respect to matters to be taken up affecting employees within those regions.

Q. And what were the subjects covered by such conferences and negotiations?

A. During the early part of 1918 and throughout 1919 and until October, we were working under orders issued by the United States Railroad Administration, which had to do with wages, working conditions, such as classification, hours of labor and overtime, and during the early period, in fact during the entire period between the spring or summer of 1918 and 1919 our conferences had to do with the application of these wage orders and the many changes in classifications and the subsequent application of wage rates to those changed classifications.

Q. When was the seniority rule established?

A. A seniority understanding was reached on the lines east of Pittsburgh and Erie and signed by General Manager O'Donnell for the company and by N. M. Jones for the organization.

Q. Which organization?

A. System Federation No. 90, in February, 1919.

Q. And for the western region?

A. For the western region, the seniority regulations were established under the National Agreement which was effective October 20, 1919.

Q. And did any questions or disputes under the seniority agreement arise, and were they dealt with in those conferences between your organization and the management of the road?

A. Oh, yes.

Q. What were the subjects or negotiations or conferences between your organization and the road management after the expiration of Federal control?

A. Settlements of disputes that had arisen during the period of Federal control, grievances arising out of the application of the National Agreement, which

was continued in effect after the period of Federal control.

Q. And what class of employees did System Federation No. 90 represent in such conferences and in such negotiations?

A. The machinists or mechanics, helpers and apprentices of all of these six craft organizations.

Q. All the shop craft employees?

A. All the shop craft employees. I say "all" for this reason, that in our conferences with the management, and in the application of the decisions, which were handed down by the tribunals established by the United States Railroad Administration and by the Government, no discrimination or no consideration was shown in their application to the employee as to whether he was a member or non-member of System Federation No. 90.

Q. All the rulings you obtained and all the agreements you reached were then applicable to all shop craft employees on the Pennsylvania Railroad System. Is that correct?

A. Without regard to membership or non-membership.

Q. Did the management of the road at any time initiate such conferences or negotiations with System Federation No. 90 upon grievances which the management had?

A. Yes.

Q. First during the period of Federal control, and then second after the termination of Federal control?

A. There were disturbances arose during the period of Federal control at Cincinnati, Ohio, and Fort Wayne, Indiana, I believe one or more places, but I just do not recall now, where our officers were called upon by the management, called into conference for

the purpose of getting the men back to work and effecting some adjustment, and it was accomplished.

Q. Conferences were held?

A. Yes.

Q. The object, you say, was accomplished, and disputes were adjusted?

A. Yes. The men were put back to work.

Q. That is, during Federal control?

A. That is, during Federal control.

Q. Was the assistance of System Federation No. 90 invoked by the management of the road at any time after the cessation of Federation control?

A. Yes.

Q. State when and under what circumstances.

A. In the spring of 1920. I was attending a convention of the Railway Employees Department in Kansas City in April. There was a serious situation had arisen at that time throughout the country, and it affected the Pennsylvania System at two or three points, one of which was Conway, Pennsylvania, what is known as the C. Y. A. strike, I think, and while in Kansas City I received a wire from General Manager McCarthy asking me to return to Pittsburgh and see what could be done in an effort to get the men back to work at the Conway shops. About the same time there was a similar situation that occurred in the territory, in Philadelphia, along the Atlantic Coast here, Philadelphia and New York, and President Jones, who was then President of System Federation No. 90, was called for, sent for, and in view of his absence at the Kansas City convention Mr. Bixler, who was the secretary-treasurer, carried on the negotiations to the end that, in a large measure at least, the matter was adjusted. However, I believe it was at that time that the Department of Justice even was brought into the

controversy before it was ended, but in both of those instances we were called upon by the management.

Q. To confer about an adjustment of the situation arising from the strikes of the shop craft employees?

A. Yes, sir.

Q. Prior to May 24, 1921, did System Federation No. 90 have occasion to appear before the Labor Board about disputes with the management of the Pennsylvania Railroad Company, or Pennsylvania Railroad System?

A. Prior to what time?

Q. May 24, 1921?

A. They were parties to the argument on the continuation of the National Agreement in Spring of 1920. They were parties to a general wage negotiation.

Q. And participated in the proceedings?

A. Yes.

Q. Before the Railroad Labor Board on the subjects?

A. Yes. That wage negotiation was initiated by the management, and the conference was at Moose Temple, Pittsburgh, Pennsylvania I believe on April 24. It was later referred to the Labor Board.

Q. For the purpose of conducting negotiations with the management of the road, and supporting the labor side of disputes before the Railroad Labor Board, did System Federation No. 90 maintain any special departments?

A. We of course had records of the conferences, all of the data that would naturally be acquired in several offices, which were constant sources of information and valuable for the purpose of reference. In addition to that the Railroad Employees Department maintained a Bureau of Research.

Q. What is the Railroad Employees' Department?

A. The Railroad Employees' Department is a department made up of the various railroad organizations.

A. A department of the American Federation of Labor. It was made up of various labor organizations, international organizations, affiliated with the American Federation of Labor, among one of which is the mechanical section made up of six shop craft organizations, which maintained counsel.

Q. Let me understand that. The mechanical section of the Railway Employees' Department of the American Federation of Labor was made up of some national organizations, as your System Federation No. 90 was made up, with respect to the district organization. Is that correct?

A. That is right.

Q. Were you part of the Railway Employees' Department of the American Federation of Labor?

A. We held our charter from the Railway Employees' Department of the American Federation of Labor.

Q. And still do?

A. And still do.

Q. You are a subordinate organization, then, of the Railway Employees' Department of the American Federation of Labor. That is correct?

A. That is right.

Q. And you say you received data and information from the Railway Employees' Department of the American Federation of Labor?

A. Yes.

Q. Did System Federation No. 90 keep all such data and collect them and use them in the negotiations with the management of the road?

A. Yes; quite frequently.

Q. On the first day of July, 1922, what was the membership of System Federation No. 90?

A. On the first day of July, 1922—

Q. Or say immediately prior thereto?

A. Approximately 45,000.

Q. And when the strike occurred on that day, how many of those went on strike?

A. Approximately 33,000.

Q. And how many remained working?

A. That would leave 12,000.

Q. Since the first day of July, 1922, was there any change in the number of members of System Federation No. 90?

A. Substantially not.

Q. Has System Federation No. 90 continued to collect the per capital assessments since that day, or the per capita taxes, rather?

A. No. We have not made any attempt,—System Federation No. 90 has made no attempt to collect any per capita tax since that date.

Q. For what reason?

A. For the reason that the men have been on strike, and it has been a question of our existence, and we have on several occasions asked for voluntary contributions, but all have been relieved of the payment of the per capita tax.

Q. Was that in conformity with the provisions of the National Constitution of the various affiliated organizations?

A. Yes.

Q. And in conformity with the usages generally established in the labor movement?

A. Yes, with very few exceptions.

Q. So that all of the members you had on or about July 1, 1922, are still carried?

A. Substantially so, so far as I know.

Q. As members of System Federation No. 90?

A. Yes.

Q. And you have testified that the officers of System Federation No. 90 are still maintained?

A. Yes.

Q. Where?

A. At 414 Morehead Building, East Pittsburgh, Pennsylvania.

Q. Were they located there prior to the first day of July of 1922?

A. They were.

Q. And the officers are still functioning?

A. Yes.

Q. And the Executive Council is?

A. Yes.

Q. Did the Executive Council of System Federation No. 90 take any steps or adopt any resolution with respect to the institution of this suit?

A. The Executive Council?

Q. Yes.

A. It was authorized to handle the affairs involved in the dispute, and by unanimous action—

By Mr. Barnes:

Q. I suppose you have some minute book record of that?

A. We have memos of various kinds.

By Mr. Hillquit:

Q. Go ahead.

A. And by unanimous action of our Executive Council decided to institute suit, and in compliance with our law and the parent bodies, referred the matter to the Executive Council of the Railway Employees' Department of the American Federation of Labor when it was approved.

Q. It was approved by whom?

A. By the Executive Council of the Railway Employee's Department which is made up of the President and Secretary of the department and the Presidents of the six affiliated international organizations.

Q. Which is the parent body of the System Federation No. 90?

A. Yes.

Q. Were there any collective agreements in force between the management of the road and the shop craft employees of the organization prior to the date of the National Agreement?

A. We were working under orders handed down by the United States Railroad Administration during the period of Federal control prior to the effective date of the National Agreement, and there were one or more understandings, for instance the seniority understanding arrived at with Mr. O'Donnell in behalf of the Lines East.

Q. That was during the period of Federal control?

A. Yes.

Q. Were there any collective agreements between the parties prior to Federal control?

A. There were none.

Q. And how were the wages and conditions of work established on the Pennsylvania Railroad System for the shop craft employees?

A. By the management.

Q. With or without consultation with the organizations of employees?

A. There were no organizations of employees.

Q. And no consultations with employees?

A. I mean no organization of employees which had any recognization, which enjoyed any recognition.

Q. Were there any that did not have recognition, I mean of the shop craft?

A. Yes, there were shop craft employees working for the railroad prior to that time or at that time.

Q. Was piece work in effect prior to Federal control?

A. Prior to and during Federal control it was in effect, until 1919, when it was abolished, February, 1919.

Q. What is piece work?

A. Piece work is a system of payment per piece under which the employee is allowed so much time for doing a certain operation. He is paid for this set sum sometimes by a time study operator, who may or may not be qualified himself to perform the operation. Frequently he is not. In some instances the employee is allowed to work a few hours, possibly a day, possibly more than a day, on the operation to ascertain how much work he can do within a given period. Then the time for the amount per piece or per operation is set by the management. If the employee is a conscientious, upright, honest employee, who would rather work for nothing or for half pay than, have something on his card that he had not done, he has an Inspector to whom he is reporting, who is going over his work, who is a man of the same type, then he will make good wages if he works hard and has good prices. If he has not good prices, does not choose to work hard, or if he does work hard and has not good prices, which is frequently the case, he makes poor wages. Now the system, then, begets dishonesty.

Q. And how long did that system continue under Federal control?

A. From January 1, 1887, to February, 1919.

Q. And under what circumstances was the system abolished?

A. As a result of a ballot taken at the direction of the Director General of Railroads.

Q. And a ballot taken by whom,—among whom?

A. Among the employees as a whole of the shop craft employees.

Q. To ascertain the sentiment toward piece work?

A. No, it was taken by the management under their direction at the direction of the Director General.

Q. Was the result made public?

A. It was.

Q. What was it?

A. Approximately 98 per cent.

Q. Ninety-eight per cent. of the men voted against—

A. Voted against piece work. That was the figure given to us.

Q. And it was then that piece work was abolished. Is that correct?

A. Immediately following the tabulation of the vote.

Q. During the period of your active employment for the Pennsylvania Railroad Company did you have opportunity to ascertain the sentiment of the shop craft employees about the terms of wages and the working conditions then in existence.

(Objected to. Question withdrawn.)

By Mr. Hilliquit:

Q. On the 24th day of May, 1921, did you have a meeting and conversation with any representatives of the defendant, the Pennsylvania Railroad Company?

A. I did.

Q. Where?

A. Broad Street Station, Philadelphia, Pennsylvania.

Q. And who was with you?

A. The six general chairmen of the six affiliated organizations.

Q. Members of the Executive Council?

A. Members of the Executive Council, yes.

Q. Of System Federation No. 90?

A. System Federation No. 90.

Q. And who was there representing the company?

A. There were I believe thirteen of the railroad officials.

Q. Can you name some?

A. Mr. Massey, at that time Assistant General Manager, now General Manager of the Eastern Region, was the presiding officer. Mr. Enochs, superintendent of Labor and Wage Bureau. Mr. P. F. Smith, Works Manager at Altoona. Mr. H. K. Brady Superintendent of the Wage and Labor Bureau of the Central Region.

Q. Altogether about thirteen, did you say?

A. About thirteen I think.

Q. And did you have a conversation with those gentlemen?

A. I did.

Q. And was the conversation transcribed at the time?

A. It was.

Q. Stenographically?

A. It was.

Q. Were you furnished with a copy of it?

A. I was.

Q. Have you got it here?

A. I have. This is the copy of the stenographic transcript furnished us through the Pennsylvania Railroad management, taken by Guilbert & Lewis, of Philadelphia.

Mr Hillquit: We offer in evidence this stenographic transcript of the conference testified to by the witness.

(Marked "Complainants' Exhibit No. 3, T. R. P.")

By Mr. Hillquit:

Q. After the conference thus held on the 24th day of May, 1921, did System Federation No. 90 take a vote of its members on the question as to who was to represent them in negotiations with the management of the company?

A. It did.

Q. And did you prepare a ballot?

A. I assisted in its preparation.

Q. Have you got a copy of it?

A. I believe so.

Q. I show you this paper and ask you whether this is one of the ballots prepared by you for submission to the members of System Federation No. 90?

A. Immediately following the conference on May 24, 1921.

Q. Is that one of those ballots?

A. It is.

Q. And except for the words and figures written in, it is in the form of all of the other ballots sent out by you?

A. Yes.

Mr. Hillquit: I offer it in evidence, with the exception of the words and figures written in.

(Marked "Complainants' Exhibit No. 4, T. R. P.")

(For copy of this Exhibit see Page 97.)

By Mr. Hillquit:

Q. And was a vote on these ballots returned to you at headquarters of System Federation No. 90?

A. It was.

Q. And was vote canvassed?

A. It was.

Q. By whom?

A. By tellers appointed for that purpose by our Executive Board.

Q. Were you present?

A. To see that the work was done, but not to participate in the tubulation.

Q. Was the vote tabulated?

A. It was.

Q. And was the result announced?

A. It was.

Q. And published?

A. It was.

Q. And what was the result?

A. The vote for representation through System Federation No. 90, 37,304, and against, or for some other organization, 7.

Q. You stated before you had a furlough on account of being an officer of System Federation No. 90?

A. Yes.

Q. When were you so furloughed?

A. In February, 1919.

Q. That was formerly styled a leave of absence, was it not?

A. Yes.

Q. How long did that remain in force?

A. Nine months.

Q. Until when?

A. From the date of issue.

Q. Until when?

A. Then I had to return to work and work one day in the shop, and was granted another nine months. The furloughs were extended continuously except you had to come in and work one day every nine months, then make a new application.

Q. Is that furlough or leave of absence still in force?

A. No, sir.

Q. How was it terminated?

A. I received about July 20, 1921—I might say there is correspondence exchanged between the management and myself on that issue, but it was about July.

Q. Let me have the letters, if you have them.

A. 1921. Here is the correspondence relating to the termination of it.

Q. I will show you a letter of the Pennsylvania System, Central Region, dated July 15, 1921, addressed to Mr. N. P. Good, a carbon copy of letter dated July 22, 1921, in answer to such letter and a letter of the Pennsylvania System dated July 23, 1921, addressed to N. P. Good, and will ask you whether this is the correspondence you referred to?

A. Yes.

MR. HILLQUIT: I now offer those letters in evidence, and the carbon copy of Mr. Good purporting to be an answer, it being offered subject to verification,—that is, it is to remain in evidence unless it is objected to by the defendant.

(Letters just offered in evidence marked respectively, "Complainants' Exhibits Nos. 5, 6 and 7, T. R. P.")

(For copies of these Exhibits see Page 98.)

By MR. HILLQUIT:

Q. One of the averments of the Bill of Complaint here is to the effect that a number of furloughed employees in the shop crafts, upon being called to return to work, were given certain agreements and asked to sign them, which they refused to do, under the direction of the System Federation No. 90. I am going to ask you whether System Federation No. 90 at any time

instructed its members to sign such agreements, if made a condition of re-employment?

A. Yes, we did.

Q. Please state when you issued such instructions, and give us the date as nearly as you can.

A. In the fall of 1921. It was along about around the 1st of September, I would say. It must have been around in about that time. It was around the 1st of September. Possibly late in August or early in September.

Q. How many members of your Executive Council are present here in court at this time?

A. There are seven.

Q. Will you enumerate them, please?

A. Mr. Bixler, Secretary Treasurer; Mr. Kutz, General Chairman of the machinists; Mr. Weller, Acting General Chairman of the boilermakers; Mr. Myer, General Chairman of the sheet metal workers; Mr. Woomer, General Chairman of the electrical workers; Mr. Berger, General Chairman of the car men, and myself.

Q. That is seven out of—

A. Eight.

Q. Will you state whether to your knowledge there were any strikes on the Pennsylvania Railroad prior to Federal control?

A. Yes, there were.

Q. And will you also state whether these minutes, Complainants' Exhibit No. 3, were taken down by a stenographer employed by the company or by you?

A. That is, the minutes of the May 24th meeting?

Q. Yes.

A. I understand they were taken down by a stenographer employed by the company, for a considerable time. This is only one of many copies of minutes we

received, and it was the practice in the beginning that our conferences would be held and minutes taken of the conferences and we would be supplied with copies of them. Later on, in one or two instances, we paid for copies, but they were taken by the stenographer employed by the Pennsylvania Railroad.

Cross-examined.

By Mr. Barnes:

Q. As I understand it, your present occupation is the official of this organization?

A. Yes.

Q. You are not employed in any way or other way?

A. No, sir.

Q. You know, do you not, that Federal control by the United States Government of the railroads under the Director General, variously referred to by you as Federal control by the Railroad Administration, commenced on January 1, 1918, and it terminated on March 1, 1920?

A. That is right.

Q. Subject to the provision of the additional period of six months, usually referred to as the guarantee period, expiring on September 1, 1920, durwhich latter period the control of the Federal administration was under the terms of the Transportation Act retained over railroads, in respect to certain matters.

Mr. Hillquit: I object to the latter portion of the question. I do not want to be captious, but it is purely a conclusion of law.

The Court: No. The question of fact in it is whether the witness knew that. I do not know the importance of it or the relevancy of it. That has

not been developed, but that is the question that is asked him.

MR. HILLQUIT: If it is only a question as to his knowledge I have no objection.

THE COURT: Whether he had it in his mind, or knowledge.

THE WITNESS: The latter part of the question—may I ask for a little light on that,—the latter part of the question with respect to certain matters? I am somewhat in the dark as to what you mean there. I do not understand that they exercised any particular control.

Q. I will say reserved control, then. What I had in mind is this. Are you familiar with Section 312 of the Transportation Act, which says, "Prior to September 1, 1920", which was the expiration of the guarantee period, "each carrier shall pay to each employee or subordinate official thereof wages or salary at a rate not less than that fixed by the decision of any agency, or Railroad Board of adjustment in connection therewith, established for executing the powers granted the President under the Federal control act, in effect in respect to such employee or subordinate official immediately preceding 12.01 A. M. March 1, 1920. Any carrier acting in violation of any provision of this section shall upon conviction thereof be liable to a penalty of $100 for each such offense." Are you familiar with that clause?

A. I am familiar with that section, reasonably so.

Q. So that during the guarantee period the matters which are referred to in that section were controlled by this provision?

A. Yes.

Q. As between the employees and the Railroad Companies?

A. Yes, that is right.

Q. Do you know how many members there were in System Federation No. 90?

A. In what period?

Q. Well, each period. You said 60,000 to 63,000 in the early part, and it dropped down slightly below that, and it eventually did go down to 40,000. What is the basis of your information on that subject?

A. The per capita tax return during the period. The per capita tax was collected.

Q. And how was the tax paid?

A. Paid in by the System Federation, by the financial secretary of the System Craft Organization.

Q. And do you know how he collected it?

A. From the local lodges.

Q. Did he have a list of names of persons who were members of the local lodges?

A. I do not know that he had.

Q. Who had?

A. The local lodge roster.

Q. That is the same thing. I suppose there was some method of checking off a man's name to know whether he had paid his dues.

A. That would be taken care of in the local lodge. Not in the System Federation.

Q. Do you have a list of the names of the members in your records?

A. No.

Q. Have you now?

A. No.

Q. So that your information as to the members depends upon information furnished by the local lodges. Is that correct?

A. The craft organizations, the System Craft Organizations.

Q. I mean, you have no records you examined yourself which leads you to reach that conclusion?

A. No record embracing the entire period.

Q. What records have you?

A. The returns that have been sent in from time to time.

Q. How do they come to you? Just so much money on the basis of so much per man? Do they send you in the names of the persons who paid?

A. No.

Q. Do they send you the names of the persons who have not paid?

A. No.

Q. Where, then, is there any record of the membership of System Federation No. 90?

A. You mean a record of the individual membership?

Q. The names of the members.

A. The local lodges and the international organizations at international headquarters.

Q. Where are the international headquarters?

A. The machinists' international headquarters are at Washington, D. C. The sheet metal workers, Washington, D. C. The electrical workers, Washington, D. C. The boilermakers' Kansas City, and the Brotherhood of Railway Carmen, Kansas City, and the blacksmiths' at Chicago, Illinois.

Q. Do you know in what form the records of the membership of System Federation No. 90 would be in those different places? Would there be a separate book kept?

A. I am not familiar with their system of bookkeeping, in these international offices.

Q. So the knowledge you have, as to which you have testified here as to the membership, is derived from reports made based upon the calculation of the amount of money the local union received?

A. Yes.

Q. Is that right?

A. Yes.

Q. You do not know whether somebody paid more than his per capita tax or not, do you?

A. No, I do not know that.

Q. You think it is unlikely?

A. It is most unlikely.

Q. But you have told us during your examination that you were not getting the per capita tax any more, and that the funds for this procedure are contributed, that they are not assessed. What is the basis of that contribution?

A. Voluntary entirely.

Q. Do you know the number of persons who have made the contribution?

A. I do not. They are collected locally and sent in.

Q. Nor the amounts they contributed?

A. Yes, sir; so far as the return is made to our office, certainly.

Q. You know the amounts from each local union but you do not know the amount each individual contributed, do you?

A. No.

Q. You have not any means, then, of telling me how many persons are contributing to the maintenance of System Federation No. 90 and this litigation at this time?

A. No; not so far as the individuals are concerned.

Q. Or as to the number of persons?

A. Direct contributions, no. I have no knowledge of that.

Q. I simply want to develop your own statement.

A. Yes.

Q. Your figures are based upon a division of the amount received by 50 cents?

A. By five cents.

Q. And that is the only way you have to determine the number of persons who were then in support of the system?

A. That is correct. The usual method of taking the return was this, the financial secretary would send in a check for a certain amount of per capita tax for a given period based on so many members. That is the way the return was made ordinarily.

Q. Now you have not such a method by which you can ascertain the number of persons?

A. No. We discontinued the per capita.

Q. You don't know the names of them?

A. Not all of them.

Q. Oh, you have some friends and acquaintances, but I do not mean that. Do you know whether or not, and if so how many, employees of the Pennsylvania Railroad are now members of the System Federation No. 90?

A. As far as I know, the original membership is comparatively intact.

Q. How can you say that when you do not have any dues and you do not have a list of them?

A. How could I say otherwise?

Q. If you ask me I would hesitate to say so because I do not think you know much about it.

A. Based entirely on our original returns of the per capita tax. We discontinued the per capita tax, and have no information or direction to the contrary.

Q. When did you discontinue your per capita tax?

A. At the beginning of the strike.

Q. What date, please?

A. That would be July 1, 1922. There was a little paid in after that on back tax.

Q. Back tax?

A. Yes.

Q. But have you had any indication that System Federation No. 90 is alive, since you stopped collecting your tax?

A. Yes, sir.

Q. Just the voluntary contributions for this litigation. Is that it?

A. From the fact that assemblages have been held of strikers, officers re-elected, the federation continued, officers re-elected, and weekly meetings, and bi-monthly meetings, monthly meetings, and correspondence exchanged with the officers, and a multiplicity of evidence of the active life of the organization.

Q. You spoke of System Federation No. 90 of the American Federation of Labor?

A. System Federation No. 90 of the American Federation of Labor.

Q. Are there any employees of the Pennsylvania Railroad attending those meetings?

A. Employees on strike.

Q. No. Present employees. I am talking of persons who are not working.

A. Employees on strike who attend meetings.

Q. The employees who left the service are attending?

A. Employees on strike.

Q. Employees on strike. You mean by an employee on strike a man who is not working any more, don't you?

A. A man who has suspended his work awaiting settlement or adjustment of a dispute.

Q. He is not working. He is not getting wages, is he?

A. Not from the carrier. Not from the employer.

Q. So that an employee on strike who attends these meetings is a person who is not working any more for his employer, and to whom his employer is not paying any wages?

A. Yes. However, the attendance at these meetings at all points is limited,—the attendance at the road meetings is limited to the men on strike.

Q. You don't know very much about that, do you?

A. Well, I know enough to say it, I believe, with a sufficient degree of certainty, that attendance at these meetings is not entirely limited to men on strike.

Q. Where did you find that out?

A. Where I got the rest of my information.

Q. Just about the same source?

A. From representatives of our organizations at different points.

Q. Did they tell you the names of anybody?

A. No, they do not give me names when they submit these things.

Q. Nor numbers?

A. Very rarely, if any.

Q. You are speaking, then, of the period which terminated in July, 1922, by strike, are you not, as the time when they ceased to pay their dues?

A. Yes.

Q. What classes of employees went out on strike then?

A. Six. The mechanics, helpers and apprentices of the six shop crafts.

Q. And why did they go out on strike?

A. Because the Pennsylvania Railroad management had refused to comply with the provisions of

decision No. 218 rendered by the United States Railroad Labor Board.

Q. To what effect?

A. That the question of representation which was involved could not be settled as prescribed by the Board.

Q. That is, they went out on strike because the employer declined to recognize the organization as representative in accordance with the order of the Labor Board?

A. I do not understand the Labor Board recognized or issued any such order. They directed that a ballot be taken that provided the opportunity for the employees to vote for an individual or organization, and if the employees should vote for organization, then the Board recognized that it should be for the organization.

Q. I think you are probably right in that statement, and following that this particular defendant Railroad Company conducted an election which excluded the organization as a representative?

A. Yes.

Q. And it was for that reason that the strike occurred?

A. I do not just understand that that was it, no.

Q. State it now. You are at perfect liberty to.

A. I have said why the strike took place.

Q. You say it took place because the Labor Board directed the ballot be taken in a certain form. I say, was not that order followed by the election conducted by the railroad in which it prepared a ballot which excluded the organization?

A. No.

Q. It does not make much difference. The strike occurred after the Railroad Company had issued the

ballot which was not in accordance with the order of the Labor Board?

A. No. The carrier issued a ballot prior to the order of the Labor Board, and the order of the Labor Board in 218 was based on our appeal to the Board from the action of the carrier.

Q. Then the carrier refused to recognize that order—is that correct—then the strike occurred?

A. Yes.

Q. In other words, the strike grew out of this question of representation?

A. Yes.

By THE COURT:

Q. Let me see if I have the order of events correctly. As I gathered it, the carrier held an election. One of the rules which it prescribed was that the representatives or conferrees for whom the votes were cast should be individuals and not organizations.

A. That is right.

Q. That election was declared by the Labor Board to be an undue election?

A. Yes.

Q. In the same election the labor organization had put out a form of ballot of its own which called for the choice of the organizations as conferrees or representatives?

A. Right.

Q. The Labor Board threw out the results of both parties, and then prescribed a form of ballot of their own, which they directed should be followed in a new election to be held, and that form of ballot provided that the organization might be chosen as representative. Is that right?

A. Or individuals might be chosen.

Q. Either might be chosen?

A. Yes.

Q. Carrying that distinction through, the ballot as provided for by the carrier permitted any conferrees to be chosen whether he was a member or officer of the organization or whether he was not, requiring only that he be an individual and not an organization. Is that right?

A. Yes, in a sense it is right, your Honor, but the fact must not be overlooked in that connection, that in the Transportation Act organizations of employees are clearly recognized and their right to represent others is made clear, I believe, and in the Labor Board's decision, both in decision 119 and decision 218, the right of employees to be represented through an organization of their own choice is clearly recognized, and in the ballots submitted by the company the possibility was there and must clearly be recognized that it might deprive the employees at some points to be represented,—the right to be represented through members or through officers of their chosen organization. The carrier was providing a plan in some instances that held the possibility of enforcing representation through employees who were not officers or elective representatives of the organization.

Q. I appreciate that. Putting it another way, it might be expressed in this way, that the objection to a ballot being cast for an organization instead of for an individual left open as uncertain who the conferree as an individual might be. The organizations, however, provided in every case who the individual was to be. So that there was no uncertainty in that respect,—no practicable uncertainty. Now, when it came to a vote the individual employee who was casting the vote might know and would know and have in mind the organization which he wanted to represent him, but he might

not know and might not have in mind the individual official of the organization who would act if the individual was chosen?

A. Taking into consideration, your Honor, the organization then in existence, with its corps of officers, any employee voting for an organization knew beforehand who would be his immediate representative upon the selection of this organization. If he voted for an individual under the ballot on a given division he had no idea who the representatives selected on another division would be or a representative of his division would cooperate in transacting his business and affairs.

By Mr. Barnes:

Q. (Paper shown witness.) That ballot was in May, 1921, was it not?

A. No.

Q. When was this? The election, rather?

A. The election was taken in June.

Q. June, 1921. That ballot says this: "Do you desire to be represented by System Federation No. 90 of the Railway Employees' Department of the American Federation of Labor, through its designated and duly authorized representatives, in negotiating an agreement with the management of the Pennsylvania System"? That was the thing you sent out? That is the thing you have referred to?

A. That is one of the questions.

Q. I thought that was the only question that was on the ballot?

A. No. There is another question. The other question is this, "If you vote no, write the name of the organization you desire to have representing you on the line below."

Q. "If you do not want this organization to rep-

resent you, what organization do you want to represent you"?

A. And write the name of it in there.

Q. When you say that 37,000 of them voted, did they all vote for System Federation No. 90 as their organization?

A. 37,304 voted for System Federation No. 90; 7 cast their votes in favor of other organizations.

Q. And this election, for which that ballot was sent out, was taken at a period when this question was in process of determination by the courts as to whether or not representation could be by organization or must be by individuals?

A. No, sir; it was taken simultaneously with the vote taken by the company on the question of the election of representatives, and the question was not before the Labor Board.

Q. When did the strike occur?

A. July 1, 1922.

Q. At that time the matter was then before the courts, was it not, on this question of representation?

A. The question was before the courts,—the question of the jurisdiction of the United States Railroad Labor Board, and their right to render decision No. 218 was before the Supreme Court.

Q. While it was before the Court the strike occurred?

A. Yes, sir.

At 1 o'clock P. M. a recess was taken until 2.10 o'clock P. M.

2.10 o'clock P. M.

Present: Parties as before noted.

NEWTON PLUMMER GOOD, heretofore sworn, recalled.

Re-direct-examination.

By MR. HILLQUIT:

Q. With respect to the membership of System Federation No. 90, is it an individual membership, or is it a membership represented by organizations?

A. For the purposes of this dispute I understand its membership is represented by organizations.

Q. In order to before members of System Federation No. 90, are the members initiated by System Federation No. 90, or are they initiated in the different lodges or local unions affiliated with System Federation No. 90?

A. They are initiated in the local unions affiliated with System Federation No. 90.

Q. And all the local unions of the Six Shop Craft organizations within the territory covered by the operations on the Pennsylvania Railroad Company are affiliated with your Federation. Is that correct?

A. That is correct.

Q. And the per capita taxes paid to you are paid by the locals for their respective members. Is that correct?

A. That is right.

Q. As far as you know, are those local unions that were affiliated with System Federation No. 90 on the first day of July, 1922, still in existence?

A. Yes.

Q. Have any of those local unions withdrawn from System Federation No. 90?

A. Not that I know of.

Q. Would you know if they had as president of the organization?

A. I presume I would.

Q. Had any such local been expelled by System Federation No. 90 from membership?

A. They have not.

Q. After calling the strike on July 1, 1922, did System Federation No. 90 at any time offer, in behalf of its members, to resume work, on condition that the road complied with the decision of the Railroad Labor Board, Decision No. 218?

A. Yes.

Q. And was the offer acted on by the road?

A. Not to my knowledge.

Q. Are your members still ready to resume work on condition that the company comply with decision No. 218 of the Labor Board?

A. We certainly are.

Re-cross-examination.

By Mr. Barnes:

Q. Who are the Executive Council?

A. Who are the Executive Council of System Federation No. 90?

Q. Yes.

A. Do you desire the names of the Council?

Q. They are individuals, are they?

A. They are individuals.

Q. Members of the System Federation?

A. Members of the respective craft organizations and officers thereof.

Q. And are they employees of the railroad?

A. They are employees who were granted leaves of absence as such representatives, who subsequently had their leaves of absence cancelled, and were notified to return to work, and in some instances told plainly that if they refused to obey instructions and return to duty on the 25th of July they would be dismissed from the service, and upon their failure to do so were dismissed from the service.

Q. You said it was by action of the Executive Council that this litigation was determined to be instituted. Is that correct?

A. It is.

Q. Why, then, do you say that for the purposes of this litigation the organization is one of the representatives, and not of individuals?

A. Because we hold that the dismissal of these representatives was a violation of the rules in existence legally at the time the dispute took place, and at the time that they were dismissed from service—illegally dismissed from service.

Q. I understand that. That is not quite what I asked you. Mr. Hillquit asked you whether for the purposes of this litigation the members of System Federation No. 90 are individuals, or are other organizations, and you said for the purposes of this litigation they are other organizations.

A. I do not know that I understood Mr. Hillquit's question that way.

(Question and answer read as follows:

"Q. With respect to the membership of System Federation No. 90, is it an individual membership, or is it a membership represented by organizations?

"A. For the purposes of this dispute I under-

stand its membership is represented by organizations.")

By Mr. Barnes:

Q. That is the question to which I direct your attention. In connection with it I recall to your recollection you testified that this litigation was directed to be undertaken by the Executive Council, and the members of the Executive Council are individuals?

A. Who are officers.

Q. Who are officers. So that you assume that, being officers of other organizations and at the same time members of the Executive Council, they are not made up of individuals, but in fact of organizations. Is that your theory?

A. The organization of which these men are officers is a federation of the respective system craft organizations of which these men are members.

Q. Yes, but they are acting as individuals, are they not, on the Executive Council?

A. Individuals and as representatives. As representatives selected under the laws of the respective organizations.

Q. You stated you did not know whether anybody had withdrawn, but you presumed you might know or you would know. What did you mean by saying that? What is your meaning when you say you presume you would know? Do you really know anything about it?

A. I think I have a very comprehensive knowledge.

Q. Why did you use the word "presume"?

A. In view of the close contact between these system craft organizations and the several federation offices, in all probability that matter would be called to my attention.

Q. Yes, but it has not been one way or the other?

A. No.

Q. Have you cancelled any of their charters?

A. No, sir.

Q. Nothing has been done about it at all. That is the fact, is it not?

A. Yes. Taken no action.

Q. Just remained as it was, as far as you know?

A. Yes, sir.

Re-re-direct-examination.

By Mr. Hillquit:

Q. Let us clear that up. Your Executive Council, as I understand your testimony, consists of the president, who is elected at the convention?

A. Yes.

Q. And the secretary-treasurer likewise elected at the convention?

A. Yes.

Q. And six chairmen of the respective six craft organizations within that district, each of whom is elected by its own organization?

A. Yes.

Q. And not by convention?

A. No.

Q. He holds his office in the Executive Council by virtue of being chairman of his craft organization?

A. That is right.

Q. And if there is a change in the chairmanship of the craft organization, there is a corresponding change in the Executive Council. Is that correct?

A. That is correct.

Q. So that these six members hold their offices in the Executive Council in a representative capacity?

A. That is right.

Q. Will you please state why you made this statement, "For the purposes of this dispute", you consid-

ered the membership of System Federation No. 90 to consist of organizations?

A. I did not understand the question. I answered it on the basis of representation. I can understand now, Mr. Hillquit, that I misunderstood your question.

Q. Is it not a fact that for all purposes System Federation No. 90 is made up of a number of labor organizations, local labor organizations, and all of the membership of all of such locals comprise the body of the membership of System Federation No. 90?

A. All of the membership of all except locals—employes of the Pennsylvania Railroad.

Q. I understand. Then, if one local organization affiliated with System Federation No. 90 has some members employed on the Pennsylvania Railroad and some members not employed on the Pennsylvania Railroad, but elsewhere, the per capita tax is paid upon such members as are employed on the road. Is that correct?

A. All of the locals affiliated with System Federation No. 90 have some members employed on the Pennsylvania Railroad, and it is possible that all of them have members employed on other railroads.

Q. But is that per capita tax based only on such members as are employed on the Pennsylvania Railroad Company?

A. Only on such members as are employed by the Pennsylvania Railroad Company.

THE COURT: I do not know whether I correctly understood the last question and answer or not. When you speak about the per capita tax, do you refer to the per capita tax of which the witness had previously spoken, or is that a general question?

MR. HILLQUIT: Referring to his previous testimony.

ROBERT V. MASSEY, sworn.

MR. HILLQUIT: By stipulation of counsel, this witness is to be examined as under cross-examination.

MR. BARNES: But he is called as their witness. If they choose to call him, that is their affair.

THE COURT: Counsel for complainants call the witness as if under cross-examination, it being stipulated that the question of the right to so call him shall be decided as it would have been decided had Mr. Atterbury been called in his place. For the purposes of these questions, Mr. Massey is Mr. Atterbury.

MR. BARNES: That is the understanding. They call him. I make no stipulation beyond that he is in Mr. Atterbury's position.

MR. WALLERSTEIN: We want it distinctly understood that he is not our witness.

MR. HILLQUIT: I think it is safe to be bound by the direct answers of Mr. Massey. I do not anticipate anything but the truth from him.

By MR. HILLQUIT:

Q. Where do you reside?

A. Philadelphia, Pennsylvania.

Q. Are you an officer or employe of the Pennsylvania Railroad Company, defendant herein?

A. I am.

Q. What capacity?

A. General Manager of the Eastern Region.

Q. How long have you been in the employ of the Pennsylvania Railroad Company?

A. Since September 1, 1892.

Q. Does the Pennsylvania Railroad Company operate a system of railroads known as the Pennsylvania System?

A. They do.

Q. And since when has it been operating such a system?

A. Since March 1, 1920.

Q. That is the date of the return of the road to private ownership. Is that correct?

A. Yes, that is correct.

Q. And prior to that?

A. Do you mean prior to that what the organization was?

Q. Who operated the system?

A. We had what was known as the Lines East and Lines West the Lines East being the territory east of Pittsburgh and Buffalo, and the Lines West, west of those points.

Q. Did the Pennsylvania Railroad Company operate that system immediately prior to Federal control?

A. I think the president of the Pennsylvania Railroad Company was also the president of the Pennsylvania Company, which was the Lines West of Pittsburgh.

Q. When did both the Pennsylvania Company and the Pennsylvania Railroad Company merge into one management?

A. On March 1, 1920.

Q. That is, upon the return of the road to private ownership. Is that correct?

A. That is correct.

Q. Prior to that time and prior to Federal control, the eastern part of the system was operated by the Pennsylvania Railroad Company?

A. Yes.

Q. And the western by the Pennsylvania Company?

A. That is correct.

Q. And what were the relations between the Pennsylvania Company and the Pennsylvania Railroad Company?

A. In what respect?

Q. With respect to ownership or control?

A. I do not know that I exactly understand your question.

Q. Did one company own the stock of another? Was one company a subsidiary of the other?

A. I can't answer that.

Q. For lack of knowledge or because the question is unintelligibly framed?

A. No, not for the latter; but because of lack of knowledge of the ownership, the stock ownership and control and so forth. If you will suggest to me what you are trying to bring out maybe I can understand it better.

MR. HILLQUIT: If your Honor please, for the purposes of this case, in connection with the examination of this witness, the averment of the first two sentences of paragraph six of the Bill of Complaint are admitted.

By MR. HILLQUIT:

Q. You presided, I understand, at the conference held on May 24, 1921, between representatives of the road and representatives of System Federation No. 90. Is that correct?

A. Yes; who were employees of the Pennsylvania Railroad.

Q. And after such conference did the Pennsylvania Railroad Company send out ballots to its shop craft employees for the election of representatives in different regions to negotiate with the company?

A. They did.

Q. I will show you this ballot and envelope and

will ask you whether they are copies of those so sent by the company to its employees?

A. They are.

Q. Were all the ballots thus sent out by the company to all of its employees in all of the five regions substantially in the same form?

A. They were.

MR. HILLQUIT: I offer the envelope containing the ballots in evidence.

(Marked "Complainant's Exhibit No. 8, T. R. P.")

(For copy of this exhibit see Page 105.)

By MR. HILLQUIT:

Q. At whose expense were those ballots sent out—printed and sent out?

A. At the expense of the railroad company.

Q. And where were they made returnable?

A. They would be returned to the headquarters of the various general managers, one at St. Louis, one at Chicago, one at Pittsburgh, the Works Manager at Altoona, and at Philadelphia.

Q. Do you mean the general managers of the Pennsylvania Railroad Company?

A. Yes.

Q. And by whom were they counted and tabulated?

A. They were counted and tabulated jointly by the employees and representatives of the management.

Q. What employees assisted in the tabulation and counting of the ballots?

A. I could not tell you that unless I refer to the detailed sheets on which are written the names of the tellers.

Q. I mean by what process were the employees

selected who helped in the canvassing and tabulation of the vote?

A. I think when the notice went out concerning the election it fixed the date when the ballots would be counted, and where, and the employees were invited to come themselves, or send representatives to assist in the tabulation and counting of the ballots.

Q. You mean any employee could come and assist in the tabulation and counting of the ballots?

A. Any employees who were concerned in the particular election which was held. In this particular case it would be the machinists, the boilermakers, the electricians, the sheet metal workers and the blacksmiths.

Q. Take the instance of the Eastern region. You had separate ballots for the machinists, for the car men, and for the various other crafts, did you not?

A. We had separate ballots for each of the so-called six crafts in the mechanical department.

Q. Within each region?

A. Within each region.

Q. Take the Eastern region. Approximately how many machinists did you have in that region employed by the road?

A. I could not tell you that without referring to the records at that time.

Q. It would be in the thousands anyhow, would it not?

A. The machinists themselves?

Q. Machinists.

A. I should say so, yes.

Q. And then do you want us to understand that each and every one of those machinists had the right to come to the office of the General Manager and help in the counting and tabulation of the ballots?

A. Yes; if he felt so inclined.

Q. As a matter of fact, do you know how many of them appeared?

A. How many machinists?

Q. And took part in the tabulation?

A. How many machinists appeared?

Q. Yes, sir.

A. I do not. I could tell you that by referring to the records.

Q. Do you have the records with you now?

A. I do not know whether they are or not. If they are not here they can be produced. I was not present at the time the ballots were counted or tabulated.

Q. Was the result of the vote published by the company?

A. Yes, sir.

Q. With respect to each region and each craft within each region?

A. When you say published,—what do you mean by "published"? Published to the employees?

Q. I mean published in some publication, newspaper, journal or otherwise?

A. I am just trying to refresh my memory. I am not sure whether a Bulletin was gotten out after the election of the shop crafts or not.

Q. You say you are not sure?

A. No.

Q. If a Bulletin was gotten out, it was gotten out by whom?

A. Gotten out by the Railroad Company.

Q. You do not know whether it was or was not?

A. Not in this particular election, no; I do not.

Q. You do not know whether the results of the tabulation were signed by the employees in each instance?

A. I would not know that unless I referred to the tabulation.

Q. After such tabulation, no matter how arranged, did your company proceed to deal with the employees declared elected on this ballot?

A. They did.

Q. And as a result of this ballot, what elections were had? What officers or representatives of the employees were elected?

A. What percentage?

Q. No. What representatives?

A. Representatives of the different crafts were elected.

Q. How did you call them?

A. You mean when we started to negotiate?

Q. No, I mean after this ballot was taken and counted by you and the result declared. Then you dealt with the employees declared elected?

A. Yes.

Q. Therefore, in what capacity or under what title were they so elected? Were they known as local craft committees?

A. The ballot provided the means or manner of election as to how many should be elected from each division, or the notice which accompanied it.

Q. I will show you a form of ballot, Complainant's Exhibit No. 8, I will ask you for how many representatives this ballot provides?

A. It provides for three.

Q. Three representatives?

A. Yes.

Q. Then, each craft within each region was to elect three representatives. Is that correct?

A. No, each craft from each superintendent's division was to elect three from each craft as the repre-

sentatives of that craft on that superintendent's division.

Q. How many superintendent's divisions were there at the time on the Pennsylvania Railroad?

A. In the Eastern region we had 17. I think something like 46 at that time.

Q. Forty-six?

A. Yes.

Q. As I understand it, you say there were about 46 odd superintendents' divisions?

A. Yes.

Q. And within each of the divisions there were six crafts?

A. Yes.

Q. And each of such crafts within each of such divisions elected three representatives? That is right?

A. That is right.

Q. In other words, a total of 18 for each of the 46 superintendents' divisions.

A. That is correct.

Q. Is that right?

A. That is right.

Q. Did you call the men so elected, local shop craft committees?

A. It is stipulated in the ballot that the three who were elected would be the local committee for that craft on that particular division.

Q. On that particular division?

A. Yes.

Q. And the men so elected then proceeded to elect another committee?

A. Each craft committee was to elect from among themselves, that is, the three, a chairman.

Q. A chairman?

A. Yes.

Q. Then you have 46 times 6 chairmen. Is that right?

A. That is right. I say about 46 times 6.

Q. Yes. About. And what was the function of those chairmen?

A. The chairman and his committee, if he wanted them, had their dealings with the local people, up to the Division Superintendent, that is, through the shop foreman, the master mechanic and the Division Superintendent.

Q. And when a controversy went beyond the territory or jurisdiction of the District Superintendent, who attended to it on the part of the employees?

A. The representatives who were elected from that particular division.

Q. Who elected those representatives?

A. The employees.

Q. You mean the employees directly?

A. The employees by direct secret ballot.

Q. Let me get that. The employees elected three men directly?

A. Yes.

Q. That is all in the group of employees elected, and those were the local craft committees?

A. The machinists elected three. The boilermakers, three. From those three they elected their chairmen from among those three, that is, the committee of three.

Q. Those committees functioned within each superintendent's division?

A. Yes.

Q. My question is, when a controversy or dispute arose covering more than in the superintendent's division, and it was covering conditions existing in an entire region, was there another superior committee appointed for that purpose?

A. Yes.

Q. What was that committee?

A. That was the regional committee which dealt with the General Superintendent and the General Manager.

Q. And how was the regional committee constituted?

A. The regional committee was constituted with a regional chairman and six craft general chairmen.

Q. Who elected the general chairmen and the craft chairmen?

A. The employees themselves.

Q. Do you mean to say the employees directly or do you mean to say the representatives of the employees elected them?

A. The representatives of the employees elected them.

Q. So then these three representatives from each craft within a superintendent's division each elected a chairman, and so these chairmen were then elected representatives on the regional committee?

A. In some cases they were elected, the regional chairmen, by the men who were declared elected at that election held for the purpose, or the employees selected their representatives to deal with the management.

Q. I want to get that clear. The regional committees selected directly by your shop craft employees all through the road were 828 in number, divided into six committees, each of three men within each of the 46 Superintendents' divisions. Is that correct.

A. No; because on some of the divisions they did not elect any committees.

Q. Those that did not elect any we will disregard, but upon the basis of the 46 divisions, if each division had elected its representatives, or the workers in each

division had elected their representatives on your ballots, you would have a total of 828 men elected. Is that correct?

A. It would be 18 times 46, roughly.

Q. Eighteen times 46, which makes 828. Those in turn would elect chairmen of the respective committees, one for each committee of three. Is that correct?

A. That is correct.

Q. So then you would have here a number of chairmen, three times more than the general number of representatives, or 276 chairmen?

A. That is right.

Q. That is right. Then these chairmen in turn would elect a regional committee. Is that correct?

A. No; the plan as adopted was that each craft would elect their general chairman, who would be a member of the regional committee.

Q. Did you prepare or submit to your employees any ballots for the election of general craft chairmen?

A. No.

Q. How, then, did you expect your employees of each craft to elect a general chairman?

A. After they had been elected by the representatives of the employes, they took the matter into their own hands and formed their own organization among the employees for representing them.

Q. The organization formed by your employees was on the basis of the rules laid down in your ballot, was it not?

A. That is right.

Q. Which related primarily to these shop crafts within each superintendent's division. That is correct, is it not?

A. Yes, that is right.

Q. You did not create a dues-paying organization?

A. We did not.

Q. You did not create an organization comprising all the members of each craft throughout the entire territory covered by your road, did you?

A. No, it was done regionally in each region.

Q. Did you create an organization of each craft within each region covering the entire region?

A. When you say "Did we", do you mean did the railroad create?

Q. By this system included in this ballot?

A. We created it to this extent, that the ballot provided for a local committee, and after the local committee was elected, then they went ahead and formed their own organization of employees.

Q. What kind of an organization did they put up other than the one composed of representatives elected on your ballot?

A. They did not put up any at that time. Those were the men who were elected by the employees to represent them.

Q. I shall read to you from the ballot submitted by the road, and offer it in evidence, as follows:

> "The local chairman of each craft in this region will elect from among their number one craft representative, who will be a member of the regional general committee. The regional general committee will speak and act for the employees before the General Superintendent and General Manager",

and ask you whether this instruction was acted upon?

A. It was, yes.

Q. Then your regional committees were elected by the chairmen of these 276 odd local committees. Is that correct?

A. Theoretically, 276.

Q. Practically. Whatever it was.

A. Whatever it was, yes.

Q. But it was these chairmen who elected the regional committee. Is that correct.

A. Yes.

Q. Then, election to the regional committee was an indirect election not undertaken by the employees directly, but by representatives selected by them on your ballot?

MR. BARNES: That is objected to. It is a deduction not warranted by the terms of the ballot just read to the witness. It asks the witness to put a construction upon the whole situation. That is a conclusion which I think the facts bear out, but I do not think it is a proper question to put to the witness. What was done?

MR. HILLQUIT: That is what was meant to be conveyed by the question. What was done?

THE WITNESS: As far as I know, yes, but of course I was not present when these general committeemen were elected. They did that when they were alone—together.

By MR. HILLQUIT:

Q. But your company dealt with the regional committees, did it not?

A. We did, yes.

Q. And when you dealt with such regional committees was not it on the assumption that they had been properly elected as provided by your rules?

A. It was.

Q. You say the company dealt thereafter with the regional general committees on questions arising before the General Superintendents and the General Man-

agers. If a dispute arose between such committees, and between your general managers or general superintendents, was there any tribunal provided between you and your employees for the adjustment of such disputes?

A. If they had a dispute that they could not settle with the General Superintendent they then came to the General Manager.

Q. And if they could not settle it with the General Manager?

A. Machinery was provided so that it could be settled by a tribunal made up of equal representation of employees and management to which it was referred, on questions which they could not agree on with the General Manager.

Q. And this joint committee of the management and the men contained an equal number of representatives of both?

A. It did.

Q. How many of each?

A. Seven of each.

Q. Seven representatives of the management and seven representatives of the employees. Is that correct?

A. That is correct.

Q. And was there any provision as to the manner in which decisions could be reached by such a joint committee with equal representation?

A. There was.

Q. What was the provision?

A. It required a two-thirds vote.

Q. So that in order to make any decision or adjust any grievance it would require a two-thirds out of the fourteen votes. Is that correct?

A. That is correct.

Q. And what happened if a two-thirds vote could not be secured?

A. You mean if it could not be finally secured?

Q. I mean if a dispute were submitted and your joint board was divided, say seven to seven upon the dispute, what was the disposition?

A. The only reason I asked if you meant finally was because it was provided that a case which came up at a meeting of the joint reviewing committee, as it was termed, if you could not reach a decision at that meeting, that you had to reach a decision at the next meeting, and at that meeting provided you did not reach a decision, you would set up some arrangement between your employees and yourselves where it could be arbitrated, or something of that kind.

Q. And what was the specific provisions in such a case of disagreement at the final meeting?

A. No specific machinery was set up. Simply that in case a decision could not be reached at the second writing, the matter would then be disposed of as it was determined upon between the representatives of the employees and the representatives of the management.

Q. Again it required a two-thirds vote?

A. No.

Q. It required mutual consent of both sides?

A. Mutual consent.

Q. And in case there was no such mutual consent?

A. It is hardly possible to suppose that you could not mutually agree to refer something to some unbiased party for settlement.

Q. My question is, was there any provision for a final adjustment of such a dispute if the parties failed to agree upon a method of arbitration?

A. Nothing specific.

Q. Nothing in specific terms. Was it provided for in unspecific terms?

A. I should say so; yes.

Q. In what way?

A. Just as I have stated, if you could not reach a decision at the second meeting of the reviewing committee, the matter then would be disposed of in a manner mutually agreeable to both the representatives of the employees and the representatives of the management.

Q. And you assume in such a case that the employees and management would agree upon some method of disposing of it?

A. Yes.

Q. But no such method is provided?

A. No.

Q. In your organization?

A. No.

Q. Before we proceed further will you please state whether these committees so set up by the election in 1921 held any meetings?

A. They held meetings with the management immediately following the election.

Q. And who paid the members of such committees for the time consumed in such conferences?

A. They were paid by the Railroad Company?

Q. You say they were paid by the Railroad Company?

A. Correct.

Q. Did the committees as such have any revenue of their own?

A. It was not a dues-paying committee. The Railroad Company paid them for their time.

Q. Did they have offices anywhere?

A. Not immediately following the election. Since then they have offices—since the election.

Q. Where do they have their offices now?

A. They have one in Philadelphia. The regional committee has an office in Philadelphia. The regional committee has one in Pittsburgh, one in Chicago and one in St. Louis.

Q. And who pays the rent of those offices?

A. The Railroad Company where they are on property other than that owned by the railroad.

Q. Do they have any permanent officers?

A. Their by-laws provide they shall have an election every two years at which time officers shall be elected.

Q. Have they got salaried officers?

A. They are paid by the Railroad Company?

Q. Regular salaries?

A. Yes.

Q. That is, representatives of the employees elected, as you describe, by the employees, are paid salaries by the company?

A. Yes, they are.

Q. And the company pays their office rent and other expenses?

A. They furnish the office rent, yes.

Q. And it also pays for the time of the different representatives lost in conference with the company and otherwise?

A. That is correct.

Q. I now show you this booklet and ask you whether that represents a copy of the by-laws of one of such organizations?

A. I will have to say I do not know. This is the Central Region Book. If you have an Eastern Region book I would be glad to answer that question. This represents it as of this date. I think there have been some amendments. This is August 18, 1921.

Q. Then I will ask you whether in the month of August, 1921, those are the by-laws of the Association of the shop craft employees of the Eastern Region of your system?

A. They were.

MR. HILLQUIT: I offer that in evidence.

(Marked "Complainant's Exhibit No. 9, T. R. P.")

By MR. HILLQUIT:

Q. I will ask you whether similar by-laws were provided for the other regions?

A. As far as I know, yes.

Q. Who drafted those by-laws?

A. Those by-laws were drafted largely by the employees.

Q. You say they were similar in the five regions?

A. No, I beg your pardon. I did not say they were similar. You asked if they were by-laws in the other regions. I said as far as I know, yes.

Q. You did not misunderstand my question?

A. No.

Q. I asked whether the by-laws in the other regions were substantially similar—the same as these?

A. I could not answer that question. I know they have by-laws, but whether they were substantially similar or not I do not know. They may be exactly alike, for all I know.

Q. Did the employees in the shop crafts in the Eastern Region hold any meeting or convention for the adoption of by-laws?

A. No. It was done by the Regional Committee.

Q. By the Regional Committee?

A. Yes.

Q. Do you know at what time or place?

A. I know the place was Philadelphia. I do not remember the time. There were numerous meetings, I think, held.

Q. Were any members of the Railroad present at the time these by-laws were adopted?

A. Yes, sir.

Q. Who were present?

A. I think I was when these particular by-laws were adopted.

Q. Were you consulted about these by-laws?

A. We discussed them generally with our employees, yes.

Q. Did you have any draft of the by-laws with you at the time of the discussion?

A. We may have had. I would not say we did or did not.

Q. Don't you recall whether or not a draft of these by-laws was prepared and handed to you by some officer of the road, or by counsel for the road?

A. Absolutely no.

Q. But you say you do recall whether you had a draft or not. Is that correct?

A. Whether we had a draft when we had this meeting, you say?

Q. Yes.

A. We had discussed with the Regional Committee the question of by-laws. There may have been some draft drawn up.

Q. You do not recall?

A. No, I do not recall whether we had a draft at that particular meeting or not.

Q. At whose expense were these by-laws printed?

A. By the Railroad Company.

Q. And does that apply to all the by-laws subsequently adopted in each of your regions?

A. Yes,—that is, that they were paid for by the Railroad Company?

Q. Yes.

A. Yes.

Q. I show you now a copy of the regulations for government, Pennsylvania System, of Altoona Works, effective July 1, 1921, and ask you whether this was one of the booklets published with the knowledge and consent of the company?

A. Yes.

MR. HILLQUIT: I offer that in evidence.

(Marked "Complainant's Exhibit No. 10, T. R. P.")

By MR. HILLQUIT:

Q. This booklet contains, as I understand it, working rules and regulations, as well as classifications and wage rates, for the employees of the mechanical department of the Altoona works. I will ask you whether similar booklets were published for the other regions on your road?

A. They were.

Q. And were the conditions, regulations, classifications and wages uniform throughout the entire Pennsylvania System?

A. Practically so, yes.

Q. Who prepared or drafted these rules and regulations?

A. Who prepared and drafted them?

Q. Yes.

A. They were drafted by the management, that is, the original draft, but that was agreed to by the employees,—the representatives of the employees and the management.

Q. Let us get that. Let us take the Eastern division. The draft was prepared by the management?

A. The draft was prepared by the management, yes.

Q. And submitted by the representatives and yourself?

A. No.

Q. Some representative?

A. Yes.

Q. To whom?

A. To the representatives of the employees.

Q. What particular representatives of the employees?

A. I think in the Eastern Region there were 109 representatives of the employees there.

Q. The chairmen of the local shop craft committees?

A. Yes, and others.

Q. And then you went over these regulations?

A. We went over the regulations. Not in particular these.

Q. The regulations?

A. Yes.

Q. And they were adopted by both sides?

A. Yes.

Q. And about how many employees do you say participated in the deliberations on the making of these rules?

A. That differed in the different regions.

Q. Say the Eastern Region.

A. As I recall, there were about 107. Their names are all signed to the regulations as adopted. If you have a copy of the Eastern Region regulations there, it will show you exactly.

Q. About 107?

A. Practically that, yes. Something over 100.

Q. How long did the deliberations last?

A. As I recall it, in the Eastern Region, it was between two and three weeks?

Q. Two and three weeks?

A. Yes.

Q. During all of that time the employees were paid for the time?

A. They were.

Q. By the road?

A. They were.

Q. Was there any employee present in these conferences who was paid by the employees themselves for attending that conference?

A. I could not answer that.

Q. Was there any employee present who was not paid by the company for his attendance?

MR. BARKES: He was not paid for his attendance. He was paid his regular wages.

MR. HILLQUIT: For the time lost. That is what you mean. And expenses.

MR. BARNES: He got his wages as he went along, whatever they were.

By MR. HILLQUIT:

Q. And traveling expenses?

A. He got his expenses. His transportation took care of his traveling.

Q. And hotel expenses?

A. Yes; where there were any.

Q. With respect to these 107 representatives, they all met in one place?

A. In the Eastern Region they all met in Philadelphia.

Q. Did they all reside in Philadelphia?

A. No.

Q. Those who did not had hotel expenses?

A. They had.

Q. And the company paid such hotel expenses?

A. It did.

Q. And were those rules and regulations printed at the expense of the company?

A. They were.

Q. Your company, as I understand it, has collective agreements with other labor organizations, such as the Brotherhood of Locomotive Engineers and the Brotherhood of Conductors, and other so-called trainmen organizations?

A. The regulations of the engine and train service employees are signed for the employees by "John Smith, General Chairman of B. of L. E."

Q. Brotherhood of Locomotive Engineers?

A. For the employees, they are signed by all the employees.

Q. I mean, you have such agreements, do you not?

A. We have agreements, yes.

Q. I will ask you whether your company ever paid the representatives of those organizations for the time, wages lost, or expenses in conference with the company considering the agreements?

A. Yes, sir.

Q. When?

A. In conference, yes.

Q. When and where did your company pay the wages or expenses of representatives of either the Brotherhood of Locomotive Engineers or the Brotherhood of Conductors, or other trainmen, in conferences held with your company?

A. In Philadelphia.

Q. Does that relate to expenses when your company called these unions into consultation on your initiative?

A. That is where we called them in conference, the employees.

Q. When you called the employees of those crafts, the trainmen yourself, you paid them for the time lost?

A. I do not want to be misunderstood. You asked me if we had ever paid any of them. We have paid some of them, but not all of the train service employees, who we generally refer to as engineers, firemen, conductors and brakemen.

Q. What I mean is this, when an agreement between your company and one of these trainmen organizations expires, and you negotiate a renewal of an agreement with the representatives of these organizations, you get together in conference, do you not?

A. Yes.

Q. I ask whether you have ever paid representatives of those organizations for time lost in attending such conferences or for expenses incurred by them in attending such conferences?

A. No.

Q. Have you ever published the by-laws and constitutions of any of the trainmen organizations?

A. No, sir.

Q. Have you ever paid rent for any of such organizations or their offices? Did you ever pay the rent of the offices of any of these organizations?

A. No.

Q. Or did you pay the salaries of any officers of such organizations of trainmen?

A. No. I would like to qualify that. We have a joint reviewing committee with our engine and train service employees, such as I have described for the shop crafts, which you questioned me about, where we do furnish the office for the secretary of the joint reviewing committee of the engine and train service employees.

Q. That is for the joint reviewing committee?

A. Yes.

Q. And it is held in the property of the company and you do not charge rent for it?

A. That is right. This does not refer to the meeting place. This is the office for the secretary of the reviewing committee.

Q. I understand that. Did the company also initiate elections of representatives of employees in 1922 and in 1923?

A. Yes, among some classes.

Q. Among some classes?

A. Yes.

Q. Did such election extend to all employees in the mechanical crafts?

A. There was no election held in 1922.

Q. No election held in 1922?

A. No.

Q. Then the representative elected in 1921 held office until 1923?

A. Yes.

Q. And in 1923 another election was held?

A. Yes.

Q. And were the ballots printed and made by the company at its expense?

A. Yes.

Q. I will show you this and ask you whether this is one of such ballots?

A. Yes.

MR. HILLQUIT: I offer it in evidence.

(Marked "Complainant's Exhibit No. 11, T. R. P.")

(For copy of this exhibit see Page 110.)

By Mr. Hillquit:

Q. And was the vote on this ballot likewise returnable at the offices of the company?

A. Yes.

Q. Who nominated the candidates in this election?

A. The employees.

Q. Which employees, and how did they nominate them?

A. By petition.

Q. By petition?

A. Yes.

Q. Let me get that. Take the Eastern Region of the Pennsylvania Railroad System, and the boilermakers within that system? How many boilermakers were there in that system?

A. I could not tell you that without referring to the—

Q. Can you give me the approximate number?

A. I would not like to hazard a guess at that particular time.

Q. It would not be a guess. Would you say you had 1,000 of them?

A. Yes, we had 1,000.

Q. At least 1,000?

A. About 1,000.

Q. There was no organization of all of these men where they met together periodically, was there?

A. I do not know how often they met on each particular division.

Q. Was there an organization of the men as such that you know of?

A. Only as an association of shop craft employees of the Eastern Region.

Q. That was a name, but was there an organization with the membership, meetings, officers, and other

attributes of organization except the elected shop craft committees, on the ballot?

A. None that I know of.

Q. I ask you now who made the nominations for this particular division, the Eastern Region, and the boilermakers within that region. Who made the nominations of the representatives for these men?

A. The joint reviewing committee acts as a rules committee in the election and promulgates the manner under which the election shall be held and the ballots counted. The joint reviewing committee, as I have said before, in the particular shop crafts, is made up of seven representatives of the employees and seven representatives of the management. They together get out instructions as to nomination and so forth, and in the instructions issued by the joint reviewing committee, acting as a rules committee, they provided that any employees who wanted to act as a representative for his fellow employees, could get his name on the ballot by circulating a petition among the employees, which required 25, I think, signatures in order to have the name on the ballot. In other words, it is very much like a preliminary primary election.

Q. Your nominations were made by a petition of the employees, and 25 employees could nominate. Is that correct?

A. That is right.

Q. How were the employees given an opportunity to nominate? Did you send blank ballots for nominations to each employee?

A. No, it was simply a petition. If you wanted to be a candidate for a local chairman of the machinists you could get a regularly printed petition that you could circulate among the machinists of your particular division and get their signatures to the petition.

If you got 25 signatures that automatically puts your name on the ballot.

Q. Not automatically?

A. Well, through the regular machinery.

Q. You would have to present the petition; then, unless a member was approached by somebody, asking his signature to a petition, he would have no opportunity to nominate candidates. Is that correct?

A. That is correct. He had to be approached by somebody to sign the petition.

Q. Otherwise he would have no opportunity to nominate?

A. That is right.

Q. I will show you this ballot, Complainant's Exhibit No. 11, and call your attention to the fact that there are three candidates whose names are printed on the face of the ballot, with the statement "Vote for three. If this number is exceeded the ballot shall be void, according to Sections 7 and 8 of Article 4", and I will ask you whether this ballot made any provisions for voting for any candidate except the three printed on the ballot?

A. That is correct.

Q. What is correct?

A. That is correct, your statement. There was no provision made for adding any additional names, or voting for anyone else whose name did not appear on the ballot which was put there by the petition.

Q. So that three names printed on the ballot by virtue of the petition signed by 25 men were the only names that could be voted for on this ballot. Is that correct?

A. That is right.

Q. Do you still maintain the same organization created by the plan of 1921, I mean your shop craft

committees, your regional committees and your joint regional committee?

A. Yes.

Q. With the same provisions as to the method of election?

A. In this respect, the only change is that the by-laws which we negotiated after the first election provided that men should be elected for one, two and three year terms in each craft, and it also provided for a convention to be held every two years, as I recall it.

Q. Has any convention been held?

A. Yes, there was a convention held last year.

Q. When?

A. After the election in 1923.

Q. After the election in 1923?

A. Yes.

Q. For what purpose was that convention held?

A. To carry out the instructions contained in the by-laws where they elected a regional chairman and elected their craft chairmen.

Q. On what basis were delegates elected to that convention?

A. It is provided in the by-laws that the local chairmen attend this convention at the time provided for in the by-laws.

Q. It is what you would call a convention meeting of the local chairmen?

A. Yes.

Q. And the expenses of the local chairmen in attending that meeting were likewise paid by the road, were they not?

A. That is correct.

Q. Does the rule with respect to the disposition of disputes for the joint regional committee still hold good?

A. Yes.

Q. As you stated before with respect to the regional rules. Is that correct?

A. Requiring the two-thirds vote.

Q. And in the event of inability to secure such vote, referring it to another meeting, and in the event of inability to reach an understanding at such other meeting, expecting the parties to agree upon some mode of settlement of the disputes?

A. Yes.

Q. That still holds good?

A. That still holds good, yes.

Court adjourned until Tuesday, January 29th, 1924, at 10 o'clock A. M.

Complainants' Exhibit No. 4 reads as follows:

"OFFICIAL BALLOT

For All Pennsylvania System Shop Employees Covered By the National Agreement.

Do you desire to be represented by System Federation No. 90 of the Railway Employees Department, of the American Federation of Labor, through its designated, and duly authorized representatives, in negotiating an agreement with the Management of the Pennsylvania System?

Yes ____

Mark X Opposite Your Choice..... ____

No ____

If voting NO, write name of organization you desire to have represent you on the line below.

.....

Detach at Perforated Line Below and Deposit in Separate Ballot Boxes.

.....

Name .....

Date..... Occupation.....

Location..... Division.....

This ballot and stub should be forwarded to Mr. H. A. Bixler, Secretary System Federation No. 90, No. 414 Morewood Bldg., East End, Pittsburgh, Pa., on or before June 7, 1921.

NOTE—This ballot is not confined to the membership of any organization, and all employees now classified under the National Agreement, covering shop employees' are urged to vote.

The Management has raised the question as to who has the authority to negotiate an agreement, to cover the six shop crafts, and in order to decide this question definitely we are compelled to use this means of having the employees express their sentiments by their votes.

Don't Leave This to the Other Fellow: 'Do Your Duty Now'."

Complainants' Exhibit No. 5 reads as follows:

"PENNSYLVANIA SYSTEM
Central Region
Pittsburgh Division
Transportation Department
2-a Pittsburgh July 15, 1921

Mr. N. P. Good,
Apartment No. 1, Munson Building,
Eleanor St., Pitcairn, Penna.

Dear Sir:—

Referring to the furlough which was granted you from your petition as Machinist at Pitcairn.

It has now been decided that this furlough will

expire July 25, 1921 and you will, therefore, be expected to report for duty on or before July 25, 1921.

Yours truly,

R. T. MORROW,

Superintendent."

Complainants' Exhibit No. 6 reads as follows:

"July 22, 1921

IN RE: Cancellation of Furlough.

Mr. R. T. Morrow,
Supt., Pennsylvania System,
Pennsylvania Station,
Pittsburgh, Penna.

Dear Sir:—

Answering your letters of July 15 and 21, which were received by me July 21 and 22 respectively, in which you advise that the furlough granted me from my position as machinist at Pitcairn, Penna., will expire July 25, 1921, and that I will therefore be expected to report for duty on or before that date.

I am at a loss to understand this action on the part of the Management of the Pennsylvania Railroad Company, for whom I assume you are speaking, since there is no change of which I have any knowledge that does not justify the continuation of my furlough for the purpose of representing the employees of the Pennsylvania Railroad who elected me to this office, the result of which the furlough was originally requested.

One of the predominating objections which has also been apparent in our late dealings with the Management of the Pennsylvania Railroad has been its constant insistance that not one group of employees should have the right to force upon another group of employees any form of organization which was not satisfactory to them and which did not provide them

with the opportunity of the form of representation they desired, and it seems to me the position you have taken in the letters above referred to is entirely inconsistent with assertion made to various government tribunals. I have in mind particularly Mr. Wallis's late statement to the United States Labor Board, July 8, 1921, a portion of which you will find on Page #195 of the 'Proceedings of the United States Railroad Labor Board', Docket #404, Federated Shop Crafts vs. Pennsylvania Railroad, regarding Negotiation of Agreement which reads in part as follows:

> 'Your Decision No. 119 has indicated to us that any set of rules negotiated between the employees of the carrier and the Management, complying with the principles in Decision No. 119 will receive your approval. Your interpretation No. 5 has altered our view of your intent. We cannot understand why you should deny a minority the right to make an agreement provided it does not infringe the rights of the majority. We cannot escape the conclusion that you are denying to the minority one of their rights, and forcing them to agree with and be subservient to the union majority.'

Mr. Wallis here takes the position that the right of a minority to make an agreement should not be denied providing that such agreement does not infringe the rights of the majority, how then, can the Management of the Pennsylvania Railroad consistently deny the right of 'majority' to make an agreement under plans laid down by tribunals created by, and thru, the laws of the United States Government?

The furlough which I have enjoyed as a representative of the majority of the Shop Crafts on the Pennsylvania Railroad is a result of an act of the United States Government, and we understand is still author-

ized by virtue of the order of the United States Labor Board in Addendum #2 and from telegram of July 29, 1921, addressed to Mr. B. M. Jewell, President—Railway Employees' Department, A. F. L., and Mr. W. W. Atterbury, Vice President in charge of Operation of the Pennsylvania Railroad System.

I note with particular interest Mr. Wallis's statement in this same article to the Board, also in the statement to Mr. E. T. Whiter, wherein they infer that the Board does not have the authority to extend the Rules of the National Agreement, and in this it appears that they are again inconsistent for the following reasons:

(A) The authority of the Board to issue Decision #2 (Dockets 1, 2 and 3) was recognized and the Decision accepted by both the Pennsylvania Management and the employees.

(B) The authority of the United States Labor Board to abrogate the Rules of the National Agreement was recognized and hearings covering an extended period were conducted by the Board and engaged in by representatives of the carrier.

(C) The authority of the Board in Decision #119 to abrogate the Rules as of July 1, 1921, was again recognized by the carrier but the carrier has apparently denied the right of the Board to do so provisionally when the provision meant the extension of the Rules beyond July 1st, 1921 because of certain conditions.

As an employee of the Pennsylvania Railroad and a representative of a majority of the employees, it seems to me proper to ask why the Management of the Pennsylvania Railroads does not recognize the right of the Board to extend certain conditions over which

its right to terminate has been recognized by the Management.

From Addendum #2 to Decision #119 and the Board's telegram of July 29, 1921, addressed to Mr. Jewell and Mr. Atterbury, we understand that the Labor Board recognized the existence of a dispute by setting a date for hearing and decision thereof, and that in the interim the provisions of Addendum #2 would continue in effect the Rules of the National Agreement.

One of the Rules of the National Agreement is Rule #39 which provides that—

> 'The company will not discriminate against any committeemen who, from time to time, represent other employees, and will grant them leave of absence and free transportation when delegated to represent other employees.'

I am only asking that this Rule which does not in any sense imply—closed shop conditions, be recognized and applied to representatives of a mapority of the employees since we do not want to believe it is the intention of the Management of the Pennsylvania Railroad to force upon its employees a form of representation which is not acceptable to a majority of them, and thereby, autocratically install the closed shop practice which they have so consistently and earnestly fought against in all of your negotiations.

It is my desire as an employee of the Pennsylvania Railroad Company and a representative of the employees to conserve the best interest of my employer as well as the employees and the public and to adhere strictly to laws and orders laid down by, and through, tribunals created under Government laws, and I do not understand it is the intention of the Management of the Pennsylvania Railroad to knowingly and willingly

set aside these laws in order to further their own selfish interests and with utter disregard of the wishes of the majority of their employees. Therefore, in view of the fact there is no change in the sentiment of the majority of the employees with regard to my continuing as their representative, and there is no change in the laws which extends to me that right, I would be glad to be advised at a very early date the reasons assigned by the Management of the Pennsylvania Railroad for cancelling my furlough and notifying me to return to work July 25, 1921.

Trusting I may be favored with a very early reply, I am,

Yours very truly,

President.

NPG.MM"

Complainants' Exhibit No. 7, reads as follows:

"PENNSYLVANIA SYSTEM
Central Region
Pittsburgh Division
Transportation Department
2-a Pittsburgh July 23, 1921

Mr. N. P. Good,
Apartment No. 1, Munson Building,
Eleanor St., Pitcairn, Pa.

Dear Sir:—

In connection with your letter of July 22nd, having reference to our communication of July 15, 1921.

We wish to reaffirm the advice contained in our communication to the effect that it has been decided to cancel your furlough effective as of July 25, 1921.

Yours truly,

R. T. Monrow,
Superintendent."

Complainants' Exhibit No. 8 reads as follows:

"PENNSYLVANIA SYSTEM

Eastern Region

Decision No. 119 of the United States Railroad Labor Board ceases and terminates on July 1, 1921, the rules, working conditions and agreements in force under the authority of the United States Railroad Administration.

The Labor Board directs that the management and employees designate and authorize representatives to confer and decide rules and working conditions, such conferences to begin at the earliest possible date. Undue delay on the part of carrier may cause extension of rules, working conditions and agreements beyond July 1st. Undue delay on the part of employees may cause termination at an earlier date.

The Labor Board laid down sixteen principles to be kept in mind in negotiations between the management and employees, Principle No. 15 reads as follows:

> 'The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice.'

In order to fairly determine the employees' choice of representation, a vote will be taken by letter ballot as set forth below. This vote is to be taken without reference to or consideration of the membership or non-membership in any organization. Employees are free to vote their choice according to their own inter-

ests and without prejudice. Voting will be confined to active employees.

The employees under each Master Mechanic including shop craft employees in other departments of the same division or territory will vote for three employee representatives from the craft in which they are employed to constitute a local Craft Committee. If empowered by a majority vote of employees the Local Craft Committee will select from among their number a Local Chairman, who will be a member of the Division Committee, who will speak and act for the employees before Division Officers.

The Local Chairman of each craft in this region will elect from among their number one craft representative who will be a member of the Regional General Committee. The Regional General Committee will speak and act for the employees before the General Superintendents and General Manager.

Two or more votes in one envelope and two or more votes from any one employee will not be counted.

Enclosed are three envelopes. Ballot, when filled out, should be placed in small envelope marked 'Official Ballot, and enveloped sealed. This envelope should then be placed in the envelope having in upper left-hand corner blank spaces for name, occupation, location and division of the employee filling out the ballot. These blank spaces must be filled in and this envelope should then be sealed and placed in the large envelope addressed to Superintendent, and mailed by Railroad Service or United States Mail.

Count of ballots will begin Monday, June 13, 1921, at 9 A. M., Eastern Time, Room 53, Broad Street Station, Philadelphia, Pa., in the presence of representatives of the management and such representatives of the employees as desire to be present."

BALLOT.

I hereby cast my vote for the employees shown below, to act as my representatives on..... Division, in connection with negotiations concerning disposition of the matter covered in Decision No. 119, United States Railroad Labor Board.

CHOICE OF REPRESENTATIVE
COMMITTEE
VOTE FOR THREE*

Name of Committeeman voted for
.....
Occupation .....
Location .....
Division .....
Name of Committeeman voted for
.....
Occupation .....
Location .....
Division .....
Name of Committeeman voted for
.....
Occupation .....
Location .....
Division .....

*Give in each case the Name, Occupation, Location and Division of the person for whom you are voting to represent you.

Monday, June 6, 1921, is fixed for the day of the election and ballots must be forwarded not later than that date by train service or by United States Mail to the Superintendent, who will check against the payrolls to see that all those voted are employees. Ballots with

the poll list or roster will then be promptly forwarded by registered mail to the General Manager, who will arrange for the count to begin on Monday, June 13, 1921, at 9 A. M., Eastern Time, Room 53, Broad Street Station, Philadelphia, Pa."

Envelope:

"Put no Marks of Identification on This Envelope
This envelope to be opened only by tellers of election
in the General Manager's Office
OFFICIAL BALLOT
Place your BALLOT in this envelope and SEAL it."

Envelope:

"EASTERN REGION This Envelope to be Opened
Only By Tellers of Election
in The General Manager's Office
Shop Crafts Mechanics,
Helpers, and Apprentices
EMPLOYEE VOTING:
Name .....
Occupation .....
Location .....
Division .....
Use this Envelope to Enclose Small Envelope Containing Your Ballot."

Envelope:

"PENNSYLVANIA SYSTEM R. R. S.
Eastern Region
Superintendent
Williamsport Division
Williamsport
Pa.
PERSONAL"

Complainants' Exhibit No. 11 reads as follows:

"Official Ballot For Boilermakers, Their Helpers and Apprentices.

THE ASSOCIATION OF SHOP CRAFT EMPLOYEES OF THE EASTERN REGION, PENNSYLVANIA RAILROAD SYSTEM

Election of Representatives on the Middle Division, May 21, 1923.

Important Instructions. Read Carefully.

Indicate your preference by placing an (X) before the names of the candidates of your choice in the column provided for same

Make no other mark or marks on this ballot

VOTING BY BALLOT BOX

Voters voting by ballot boxes will detach ballot along perforated line, fold, and place in locked ballot box. These ballot boxes, together with Election Rolls, shall be forwarded by the various election Boards to the Regional Joint Committee, Shop Craft Employees, Room 53, Broad Street Station, Philadelphia, Pa., not later than 11.59 P. M., Eastern Standard Time, Monday, May 21, 1923.

VOTING BY MAIL.

Place ballot in small envelope No. 1 marked 'Official Ballot' and seal it; then place this envelope in envelope No. 2 and seal it; write your name, craft and location in space provided in upper left-hand corner of envelope No. 2. Then place envelope No. 2 in stamped addressed envelope and mail it to the Regional Joint Committee, Shop Craft Employees, Room 53, Broad Street Station, Philadelphia, Pa., not later than 11.59 P. M., Eastern Standard Time, Monday, May 21, 1923.

Two (2) or more ballots in one (1) envelope, or two (2) or more ballots from any one (1) employee will not be counted.

This ballot is SECRET. Envelopes No. 2 will be checked against the poll list, removed and destroyed by the Tellers. Envelope No. 1 will then be opened and count made.

Official Ballot For Boilermakers, Their Helpers and Apprentices.

THE ASSOCIATION OF SHOP CRAFT EMPLOYEES OF THE EASTERN REGION, PENNSYLVANIA RAILROAD SYSTEM

Election of Representatives on the Middle Division May 21, 1923.

Vote For 3. If this Number is Exceeded, The Ballot Shall be Void, According to Sections 7 and 8 of Article IV.

Mark (X) Here	Name	Craft	Location
()	Delaney, G. B.	Boilermaker	E.H., Hollidaysburg, Pa.
()	Kling, O. M.	Boilermaker	East Altoona, Pa.
()	Sarony, P. J.	Boilermaker	E. H. No. 3, Altoona, Pa.

Envelope:

THE ASSOCIATION OF SHOP CRAFT EMPLOYEES OF THE EASTERN REGION PENNSYLVANIA RAILROAD SYSTEM

NO. 1.

OFFICIAL BALLOT.

Put no marks of identification on this envelope.

Place your ballot in this envelope and seal it

To be opened only by tellers appointed by Regional Joint Committee.

Envelope:

"THE ASSOCIATION OF SHOP CRAFT EMPLOYEES OF THE EASTERN REGION, PENNSYLVANIA RAILROAD SYSTEM

This Envelope to be Opened Only by Tellers of Election

Employee Voting:
Name .....
Craft .....

NO. 2

Location .....
Division .....

To TELLERS OF ELECTION

Use this envelope to enclose envelope No. 1 containing your ballot, then place in stamped envelope and forward by United States Mail."

Envelope:

STAMP

"To:
REGIONAL JOINT COMMITTEE, SHOP CRAFT EMPLOYEES
ROOM 53, BROAD STREET STATION,
PHILADELPHIA, PA."

PENNSYLVANIA RAILROAD SYSTEM AND ALLIED LINES FEDERATION No. 90, et al.,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, &c.

Philadelphia, Tuesday, January 29th, 1924, 10 A. M.

Present: Parties as before noted.

CHARLES KUTZ, having been duly sworn, was examined and testified as follows:

By MR. HILLQUIT:

Q. Where do you reside?

A. I reside at Altoona, Pennsylvania.

Q. What is your occupation?

A. Machinist.

Q. Were you ever actively in the service of the Pennsylvania Railroad Company?

A. I was.

Q. In what capacity?

A. Machinist.

Q. During what period?

A. I was employed by the Pennsylvania Railroad Company continuously from the year 1903 until the year 1919, when I was given a leave of absence as a representative of the employees.

Q. On what account were you given a leave of absence?

A. On account of being a representative to the International Association of Machinists, to which the employees belonged.

Q. Are you a member of System Federation No. 90, the complainant herein?

A. I am.

Q. Are you an officer of the organization?

A. I am.

Q. What office do you hold?

A. I am an executive board member of System Federation No. 90 and also general chairman of the machinists on the Pennsylvania System Lines, International Association of Machinists.

Q. You are a member of the Executive Council of Machinists?

A. Of the System Federation No. 90.

Q. Are you familiar with the rules, classifications and wage rates established by the National Agreement —that is, the agreement between the United States Railroad Administration and the employees represented by Railway Employees Department of the American Federation of Labor?

A. I am.

Q. I will show you this and ask you whether this is a copy of the said National Agreement.

A. That is.

MR. HILLQUIT: I offer in evidence the agreement between the United States Railroad Administration and the employees represented by Railway Employees Department of the American Federation of Labor, called the National Agreement.

(Marked "Complainants' Exhibit No. 12, C. F. P.")

By MR. HILLQUIT:

Q. I shall now show you Complainant's Exhibit No. 10, being a copy of the regulations adopted by the Pennsylvania System effective July 1st, 1921, and ask you whether you have carefully examined the same?

A. I have.

Q. Are you familiar with the rules, wage rates, classifications and provisions contained in that?

A. I am.

Q. What provisions, if any, were contained in the National Agreement with respect to piece-work in the mechanical crafts on the road?

A. The question of piece-work was prohibited insofar as Rule No. 1 of the National Agreement provided that all employees coming under this agreement —and that means all the shop crafts—would be paid on an hourly basis.

Q. Will you please read it.

A. (Reading) "Rule No. 1. Eight hours shall constitute a day's work. All employees coming under the provisions of this schedule, except as provided for in Rule 15, shall be paid on the hourly basis."

Q. I shall now ask you what is Rule 15. Read it, please.

A. (Reading). "Rule 15. Employees regularly assigned to perform roadwork and paid on a monthly basis shall be paid not less than the minimum hourly rate established for the corresponding class of employees coming under the provisions of this schedule, on the basis of 365 eight-hour days per calendar year, with pay at the rate of time and one-half time for Sundays and Holidays designated therein. Otherwise overtime will not be paid. Where meals and lodging are not furnished by the railroad, or when the service requirements make the purchase of meals and lodging necessary while away from home point, employees will be paid actual expenses. This service is distinct and separate from that performed by any other class of employees coming under the provisions of this schedule, and is not to be confused therewith. The employees assigned to it shall not be assigned to or used to perform the construction, repair and emergency work assigned to the other employees under the provisions of the general and special rules of this schedule."

Q. Is there any provision anywhere in the National Agreement permitting piece-work?

A. This rule is not quite read. Do you want me to complete it?

Q. No. The agreement is in evidence.

(Question repeated.)

A. None whatever.

Q. Referring again to Complainant's Exhibit No. 10, before you, is there any provision contained therein prohibiting piece-work?

A. You mean by this Exhibit No. 10, the company regulations?

Q. Yes.

A. There is no provision here prohibiting piece-work?

Q. Is there any provision contained therein permitting piece-work?

A. There is.

Q. Will you please read it?

A. (Reading.) "Regulation No. 44. Employees will be paid either on the hourly basis or on the 'payment by results' system, or both, as the management may determine. The method of compensation for work performed will be such as to best promote efficiency and reward individual effort."

Q. Was there any provision in the National Agreement with respect to seniority of rights of employees?

A. There was.

Q. What are seniority rights?

A. Seniority rights, as contained in the National Agreement, in the employees of the mechanical crafts, give seniority at the point where they are employed for all time work at the point as a mechanic. This seniority may be exercised in a reduction of forces, in a promotion to preferred jobs, as well as in the increasing of the forces after reduction has been made.

Q. On the point of reduction of forces, how does the seniority rule operate?

A. For example, if we have 100 mechanics at a given point, and the management desires to lay off one-half, those men that are junior will go first.

Q. That is, the men youngest in the service of the company will be laid off first?

A. That is right.

Q. And the men longest in point of service will be retained longest?

A. That is right.

Q. And on re-employment how does the rule operate?

A. The rule operates that they will be taken back in the order of their seniority. The oldest man from the point of view of service in the craft at the point will be called back first.

Q. And how with respect to promotions?

A. With respect to promotions, when a position is bulletined as being vacant or a new position is created, the oldest man from the point of view of seniority in service at the point in the craft will have the right to obtain the position and be given trial to make good.

Q. In what rules or sections of the National Agreement are the seniority rights of employees established and defined?

A. In Rule 31.

Q. Is there any provision for seniority rights in the company rules, Exhibit 10?

A. There is no provision in the company rules that provides seniority rights as we know them and have them under the National Agreement.

Q. Is there any provision therein for seniority rights of employees?

A. I would say none in the sense that there would be any true seniority.

Q. In any sense?

A. I would say none. I may make this statement a little plain: They refer to seniority rights in their regulation 29.

Q. Will you please read that.

A. (Reading.) "Regulation No. 29. Section 1.

Seniority of employees will be computed from date of last employment.

Section 2. Seniority of employees in each craft will be confined to the point where employed in the maintenance of equipment department.

Section 3. Seniority will only govern when ability and fitness are equal, the employer to be the judge.

Section 4. Employees transferred from one seniority point to another, except when reduction in forces is being made, will carry their seniority with them.

Section 5. When work is transferred from one seniority point to another, employees thereby displaced may exercise their seniority at the point to which the work is transferred to the extent that the force is increased to care for the increased work.

Section 6. Employees permanently transferred from one point to another will carry their seniority with them."

Q. Will you now please explain the difference between the provisions for seniority rights under the National Agreement and those you have just read?

A. I would say first that in their first section, where they make provision to compute seniority from the date of last employment there is a possibility that such a construction will be placed upon it that a man, regardless of what his occupation may be at a given point—it may be that of a blacksmith—if he desires to transfer to another point he may secure employment there as a machinist. His service as a blacksmith at another point, or at the same point, if you please, can under this section be included in the seniority service in the machinist craft.

Q. Let me ask you in this connection: Under the rules of the National Agreement was seniority determined by the entire length of service in the employ of the company?

A. No. Seniority meant the entire length of service within a craft at a given point, at a given seniority point.

Q. And within that point in the craft did it comprehend the entire period of service regardless of interruptions by way of lay-offs and furloughs?

A. Seniority at a given point is not interrupted or affected by temporary lay-offs. In the National Agreement our seniority rights provide that due to a reduction of force we have seniority rights for the purpose of when the force is increased and we can exercise them and go into the employment.

Q. Let me illustrate. Assuming an employee was employed in a certain craft at a certain point for twenty years, but during the period of twenty years he was laid off say two or three times for short periods. Would he be considered an employee of twenty years' standing for the purpose of determining the seniority rights under the National Agreement?

A. I want to ask one question. In your term "laid off" do you mean discharged?

Q. No. I mean temporarily laid off.

A. Temporarily laid off in a reduction of force, under the National Agreement his twenty years would be cumulative if it was in that one craft at a point.

Q. Under the rule as you have read it here, would the whole period of twenty years be credited to the workman in his seniority rights or only the period from the last employment? Read it, please.

A. (Reading.) "Seniority of employees will be computed from date of last employment." That is plain. It would indicate to me from the date of last employment.

Q. What other differences do you see between the rules established by the National Agreement with re-

spect to seniority rights and those contained in the one in your hand?

A. Section 3 I think is the weakness of all of their seniority.

Q. Read it.

A. (Reading:) "Seniority will only govern when ability and fitness are equal, the employer to be the judge."

Q. Was there any such provision in the National Agreement?

A. No.

Q. Are you familiar with the classification and wage rates of machinists established by the National Agreement and by decisions of the United States Railroad Administration and the United States Railroad Labor Board?

A. I am.

Q. What was the wage rate established for machinists by the National Agreement?

Mr. Barnes: If the Court please, I do not see the relevancy of this to this inquiry, in regard to the conditions under the National Agreement. The control of the Government was released as of the date of March 1st, 1920, subject to the conditions of the guarantee period of six months thereafter. The agreement which is now being offered in evidence, if you will examine it, was between the United States Railroad Administration and the employees, and not by the Pennsylvania Railroad or any other Railroad with any employees. Therefore, I fail to see any relevancy of the inquiry as to what was established by the Nationall Agreement in a proceeding against the Pennsylvania Railroad Company, which was not a party to that agreement. Therefore, I object to this question.

I have not objected to the general inquiry, because it was of no particular importance, but we are now approaching the question which is undertaken to be raised in the bill with respect to wages, about which we shall have a good deal to say before the evidence upon that subject is admitted by the Court. This is the opening gun on that question. I therefore object to any evidence with regard to wages established under the National Agreement as affecting this defendant in this proceeding.

(The objection was argued by counsel.)

THE COURT: The objection to this evidence goes to the whole question of a cause of action which is cognizable in equity, and whether the complainants may or may not have a right of recovery. The question may be ruled as a question of the admission of evidence. It may also be ruled as a question of the effect of that evidence after it is in. In the judgment of the Court, the second method would be the preferred method to adopt. Therefore, exercising the discretion which we understand is permitted to us by the equity rules, we will admit this testimony subject to the objection, reserving the question of its admissibility, to be determined with the question of its effect, and any and all other questions that may arise in the cause, and subject also with leave to the defendants to again raise the same question if they desire to do so at any time by a motion to strike out. An exception will be allowed the respective parties accordingly as the question may be ultimately ruled. An exception is now allowed to the defendants to this qualified admission of the evidence.

(Exception noted for defendants by direction

of the Court, to the qualified admission of the evidence.)

(The following question read:

"Q. What was the wage rate established for machinists by the National Agreement.")

A. 72 cents.

By Mr. Hillquit:

Q. Was that rate subsequently increased by any decision or award of the United States Railroad Labor Board?

A. That rate was increased by Decision No. 2, which increased the rate to 85 cents.

Q. What is the date of that Decision No. 2?

A. July 20th, 1920.

Q. What was the rate per hour of machinists on the 30th day of June, 1921?

A. 85 cents.

Q. Was that subsequently reduced by any order or decision of the United States Railroad Labor Board?

A. It was.

Q. When?

A. It was reduced by Decision 147, effective July 1st, 1921.

Q. Reduced to what amount?

A. It was reduced to 77 cents.

Q. Was that rate of 77 cents ever changed by any decision of the United States Railroad Labor Board, as far as the Pennsylvania Railroad employees are concerned?

A. No.

Q. I will now ask you to look at the classifications and rates contained in Exhibit 10, drawing your particular attention to the provisions of wage rates for machinists under grades designated therein as grades

F. G. H and J, and will ask you whether you have carefully examined the description and definitions of these grades as contained in the rules?

A. I have.

Q. Will you please state whether the work enumerated as coming under Grade F, was work performed by machinists under the National Agreement?

A. It was.

Q. Does the same apply to the work enumerated and defined under Grade G?

A. It does.

Q. And under Grade H?

A. It does.

Q. And under Grade J?

A. It does.

Q. Will you now state what were the rates established by these rules, Exhibit 10, for employes coming under grade F, as stated in the agreement?

A. 75 cents, which is two cents less than the grade rate.

Q. Under grade G?

A. 72 cents, which is 5 cents less.

Q. Under grade H?

A. 69 cents, which is 8 cents less.

Q. And under grade J?

A. 66 cents, which is 11 cents less per hour.

Q. Was there any other change made in the wage rates of machinists by these rules, Exhibit 10, that you can see on an inspection of them?

A. The machinists' condition has been altered by further action illustrated in these rules, and I will read specifications of graded work. (Reading.) "Classification of Mechanics, Helpers and Apprentices in the Maintenanace of Equipment Department. Note A. The following work and work requiring similar skill

will not be considered mechanic's work", and in some of the work that they illustrate here there is machinist's work, recognized as such under the National Agreement, which is being paid at lesser rates, machinist's helper and rates of that kind. I might mention that item 5, referring to scoops and scoop rigging; item 6, referring to the stripping of locomotives, etc.; item 7, referring to spring rigging; item 8, referring to brake rigging; as well as item 14, referring to certain operating machines, boring car and other bearings; item 16, and certain work of item 17—all this was work done by machinists under the National Agreement classification.

Q. And reduced to helpers under these rules?

A. Yes, sir. I might further say, in connection with that, that the work noted under these other classifications of F and H and G and J may also be done by machinists' helpers under their regulations. For example, at any particular department where machinists would properly be entitled to perform machinists' work, the foreman in charge may assign machinists' helpers and instruct them to do any machinists' work in order to perform that work at a given time.

Q. Was that possible under the National Agreement?

A. No; except that if it was done the machinists' helpers were never to receive the rate of machinists, which is not now the case.

Q. How many machinists were employed on the Pennsylvania Railroad System on the first day of July, 1921?

A. I would judge about 14,000.

Q. What percentage of these would come within the classifications of grades F, G, H and J, with respect to the kind of work performed by them?

A. At that time I would judge 60 per cent., and under the change in grades at this time I believe there are fully 75 per cent.

Q. Affected by this change in classification?

A. Reduction of pay.

Q. You are one of the complainants in this action?

A. I am.

Q. You have stated before that you are an official of System Federation No. 90 and a member of the Executive Council?

A. I am.

Q. You also stated that you had obtained a leave of absence from the company on account of your duties as such official?

A. I did.

Q. I will show you these letters, being a letter dated July 15th, 1921, dated at Altoona, Pennsylvania, and signed by the Master Mechanic; a carbon copy of a letter addressed to Mr. J. C. Mengel, Master Mechanic, Altoona, Pennsylvania, and signed Charles Kutz; and a letter dated July 24th, 1921, on the letterhead of the Pennsylvania System, addressed to Mr. Charles Kutz, and signed by J. C. Mengel, Master Mechanic, and ask you whether these are letters you received and whether the carbon copy hereto attached is a correct copy of the letter which you wrote in reply to the first?

A. They are.

Mr. Hillquit: I offer in evidence letter dated Altoona, Pennsylvania, July 15th, 1921, from J. C. Mengel, Master Mechanic, to Charles Kutz; also carbon copy of letter dated July 23rd, 1921, from Charles Kutz to J. C. Mengel, Master Mechanic; and also letter dated July 24th, 1921, from J. C. Mengel, Master Mechanic, to Charles Kutz.

(The letters are marked, collectively, "Complainants' Exhibit No. 13, 3 sheets, C. F. P.")

Complainants' Exhibit No. 13, 3 sheets, reads as follows:

"Altoona, Pa. July 15, 1921.

Mr. Chas. Kutz,
411-412 Ferguson Bldg.,
Pittsburgh, Penna.

Dear Sir:

The employees having selected representatives to represent them in accordance with the terms of Decision No. 119, of the United States Railroad Labor Board, and the Schedule of Regulations went into effect at 12.01 A. M., July 1st, 1921.

You are hereby notified to report for duty on or before Monday, July 25th, as your furlough will expire on that date.

Yours truly,

J. C. MENGEL,
Master Mechanic."

Altoona, Pa., July 23, 1921.

Mr. J. C. Mengle, Master Mechanic,
Altoona Machine Shops, Altoona, Pa.

Dear Sir:

Upon my return to Altoona this A. M. I found your letter of July 15, 1921, which was addressed to me, in which letter you informed me to the effect that my furlough will expire on July 25th, 1921, and also that I am to report for duty on or before that date.

I wish to enter a protest at this time against your action of terminating my leave of absence or furlough on above date for several reasons: First, according to Rules No. 21 and 39 of the National Agreement which were by authority of the United States Labor Board promulgated beyond July 1st, 1921, in amendment No. 2 to Decision No. 119. I, as a representative of District No. 40, International Association of Machinists which organiza-

tion is affiliated wth Pennsylvania System Federation No. 90, which organization was elected by employes of the Pennsylvania Railroad Shop Crafts in compliance with the requirements of Decision No. 119, to represent them in matters pertaining to Decision No. 119.

I am fully within my rights in requesting a continuation of my leave of absence or furlough beyond July 25th, 1921.

Therefore, I respectfully request as a duly authorized representative of the above named elected organization of the employees of the P. R. R. a continuation of my leave of absence in accordance with privileges contained in Rules 21 and 39 of the National Agreement and also in accordance with privileges contained in Decision No. 119. And further as the controversy between P. R. R. Co. and System Federation No. 90 is now properly before the U. S. S. Labor Board and a Decision no doubt will shortly be forthcoming deciding this dispute regarding matters pursuant to Decision No. 119 I therefore respectfully request that you rescind your instructions terminating my furlough as of July 25th, 1921, and grant a continuation of same as above requested.

CHARLES KUTZ.

"PENNSYLVANIA SYSTEM
In reply refer to No.

Altoona, Pa., July 24, 1921.

Mr. Charles Kutz,
1300 Jefferson Avenue,
Altoona, Pa.

Dear Sir:

I have before me your letter of July 23rd, and note what you say.

You are well aware of the fact that your furlough was granted for a definite and specific purpose, viz., as a representative of the employees with whom we were dealing at that time. Since that time, other representatives having been elected by the employees in place of you, the reason for

granting a furlough to you no longer exists, therefore, either you will obey the instructions you have received or your name will be taken from our rolls.

Yours truly,
J. C. MENGEL,.
Master Mechanic."

Cross-examination.

By MR. BARNES:

Q. As I understand you, in 1919, being then still in the service of the Railroad Company and during the Railroad Administration, you were given a furlough to act as a representative of the employees with whom the administration was dealing at that time?

A. That is right.

Q. In the correspondence offered in evidence as Complainants' Exhibit No. 13, commencing with the letter of July 15th, 1921, from Mr. Mengel, the Master Mechanic, in which he said: "The employees having selected representatives to represent them in accordance with the terms of decision No. 119, of the United States Railroad Labor Board, and the Schedule of Regulations went into effect at 12.01 A. M., July 1st, 1921. You are hereby notified to report for duty on or before Monday, July 25th, as your furlough will expire on that date." That was a notice to you that other representatives had been selected and your furlough would be cancelled on that day?

A. Yes, that is right.

Q. To that you replied under date of July 23rd, 1921, protesting against that and stating that you were still the authorized representative to deal with the employees in these controversies?

A. That is right.

Q. To which the Railroad Company, through its

Master Mechanic, replied to you acknowledging your letter and saying: "You are well aware of the fact that your furlough was granted for a definite and specific purpose, viz., as a representative of the employees with whom we were dealing at that time. Since that time, other representatives having been elected by the employees in place of you, the reason for granting a furlough to you no longer exists, therefore, either you will obey the instructions you have received or your name will be taken from our rolls." What did you do after you got that letter?

A. There was nothing that I could do. My name evidently was stricken from the rolls.

Q. "Either you will obey the instructions you have received or your name will be taken from our rolls." Now, what did you do?

A. I did not return to duty.

Q. You did not go back?

A. No. I continued as a representative of the employees.

Q. You did not go back to duty, did you?

A. No; not to duty.

Q. You were an employee who had had a furlough, and that furlough was cancelled, and you did not go back to your work.

A. No.

Q. What have you been doing ever since?

A. I have been representing the International Association of Machinists on the Pennsylvania Lines.

Q. That is, you have been representing System No. 90?

A. I have been the direct representative of International Association of Machinists, or District No. 40 thereof, which is a part of System Federation No. 90, which causes me, as their general chairman, to become an executive board member of the System Federation.

Q. But you told us you were a member and an officer of System No. 90 and a member of its Executive Council. Is that correct?

A. That is right.

Q. You know, I suppose, when the Federal control of the railroads terminated, do you not? On March 1st, 1920.

A. Yes. I have heard of that.

Q. This agreement between the United States Railroad Administration and the employees represented by the Railway Employees Department of the American Federation of Labor, which has been termed the National Agreement, contained this clause at the bottom of page 75, under the title "Miscellaneous," Rule 182, which I will ask you to read.

A. (Reading:) These general and special rules and regulations shall remain in full force and effect during Federal operation unless superseded or amended as herein provided. They shall be printed by the railroads, and each employee affected thereby shall be provided with a copy on request."

Q. The seniority rights which you were discussing were provided for in the National Agreement, were they not?

A. Yes, sir.

Q. Subsequently there were seniority rights established under Regulation No. 30 in the agreement reached, entitled "Regulations, Rate Schedule," etc., which has been offered in evidence as Complainants' Exhibit No. 10, dated July 19, 1921?

A. I do not understand the words "Seniority rights established under that regulation."

Q. Suppose I say "recognized".

A. Well, I did not recognize them.

Q. I do not expect you to recognize any of these things in your present position, but what I mean to say is that regulation No. 30 recognizes seniority rights?

A. Not seniority rights as the employees had them under the National Agreement.

Q. You have detailed the hourly rates of wages of machinists as 72 cents, increased by the Labor Board on July 20th, 1920. That was during the guarantee period, but subsequent to the termination of Federal control, prior to September 1st, 1920, was it not?

A. Yes.

Q. Then, on June 30th, 1921, they were 85 cents, and they were reduced on July 1st, 1921, by the Labor Board to 77 cents. Is that correct?

A. That is right.

Q. You say they were never subsequently changed by the Labor Board, but you say, as I understand you, that these rules and regulations and rates established, as expressed in this Exhibit No. 10, adopted at the meeting between the conferrees of the railroad and the employees, as described yesterday, fixed a lower rate per hour for that service?

A. I presume your question seeks to ask me how was the change brought about.

Q. No, it don't. I ask you the fact, if they were reduced under the terms of that arrangement?

A. I can agree that the rates of pay were reduced on the Pennsylvania System on July 1st, 1921.

Q. Under this schedule that you have been reading?

A. The company regulations.

Q. Exhibit No. 10?

A. Yes.

Q. These wages paid to this class of employees have a base rate, haven't they?

A. Explain what you mean by a base rate, in order that I might answer the question.

Q. Tell me what you think a base rate is.

A. I don't understand that I would mean anything by using the term "base rate". I would understand usually, if I were asked what is the base rate of a machinist, that it would mean the minimum rate.

Q. You would understand it as the minimum rate, would you?

A. Yes, sir.

Q. What was the 77 cents?

A. That was the minimum rate of our craft.

A. J. Berger, having been duly sworn, was examined and testified as follows:

By Mr. Hillquit:

Q. Where do you live?

A. Harrisburg, Pennsylvania.

Q. Are you one of the complainants in this action?

A. I am.

Q. What is your occupation?

A. Painter by trade, and General Chairman of the Brotherhood Railway Car Men on the Pennsylvania Lines at the present time.

Q. Are you a member of System Federation No. 90?

A. I am.

Q. Are you an officer of the Federation?

A. I am.

Q. What officer?

A. Second Vice President and member of the Executive Board.

Q. How long have you been in the employ of the Pennsylvania Railroad Company?

A. I was employed in June, 1916, and remained actively in the service until January, 1919, at which time I was granted a leave of absence to take up the duties of Assistant General Chairman of the car men.

Q. Are you familiar with the provisions of the National Agreement, Exhibit No. 12?

A. Quite familiar.

Q. And particularly with the portions thereof relating to the car men?

A. I am.

Q. Were the classifications and wage rates established for car men under that agreement?

A. They were.

Q. You are familiar with them?

A. I am.

Q. Have you examined Exhibit No. 10, the rules and regulations of the Pennsylvania System, and with particular reference to the classification and wages therein established for car men?

A. One similar to that. The Eastern Region.

Q. Will you state what the wages of car men were on the 30th day of June, 1921?

(Like objection by counsel for the defendants is made to this testimony as was made to similar testimony heretofore, and like ruling is made, and like exception granted.)

A. 85 cents for certain classes and 80 cents for others.

Q. Were the two classes enumerated and defined in the National Agreement?

A. The two classes were embodied in the classification.

Q. Were these rates reduced by decision of the Railroad Labor Board effective July 1st, 1921?

A. They were.

Q. To what amounts?

A. An 8 cent reduction respectively, making them 77 cents and 72 cents.

Q. Will you now turn to Exhibit No. 10 and look at the classification for car men under classes therein designated as F, G, H, I and J, and I will ask you whether the work defined as coming within such classification was work defined as work of car men under the terms of the National Agreement?

A. It was.

Q. Which of these schedules related to the higher grade, the one that was paid at the rate of 57 cents per hour after July 1st, 1921, and which to the lower grade?

A. All men included in grade F are entitled to 77 cents per hour.

Q. And under the regulations of schedule 10?

A. They received 75 cents.

Q. A difference of what?

A. Of 2 cents. Under grade G all men included in the classification should receive 77 cents, and they received 72 cents, or a difference of 5 cents. Under grade I all men should have received 72 cents per hour, but they received 68 cents, or a difference of 4 cents. Under grade J all men should have received 72 cents per hour, and they received 66 cents, or a difference of 6 cents.

Q. When you say "should have received" do you mean they received such wages prior to the enforcement of this instrument, Exhibit No. 10?

A. Yes.

Q. Will you turn now to the note under classification E, and will you read that, please?

A. (Reading:) "The following work and work requiring a similar degree of skill will not be considered mechanic's work."

Q. What does that work refer to?

A. That refers to a list of twenty-six classifications. There are certain numbers of those classifications that were formerly classified as mechanics and had their wages subsequently decreased and their classification decreased by this regulation. No. 1 was stripping or dismantling of cars or parts of cars or tenders. Formerly they received 72 cents per hour.

Q. And under these classifications what?

A. They received either 56 cents, 54 cents or 52 cents, in accordance to their length of service with the company.

Q. Making a difference of between 16 cents and 20 cents per hour?

A. That is right. No. 8, operating punch and shears, and it explains that work as all work in connection with these operations, with the exception of cutting bar stock and scrap. Operators on those machines were to receive or should receive 72 cents per hour, and they were treated in a like manner as No. 1. No. 9 embodies two classifications, operating pneumatic and hand cutting tools and holding on rivets. The operating of pneumatic and hand cutting tools was formerly classified as mechanics' work, and should receive 72 cents per hour, and they were treated in the same manner as No. 1.

Q. When you say they have been treated in the same manner you mean they have been reduced to the position of helpers?

A. Under this classification.

Q. With an hourly rate range from what to what?

A. 56 cents to 52 cents per hour. No. 10, straightening the metal parts of cars with backing hammers, sledges or air presses or forges, formerly classified as mechanics' work, reduced to the helpers' classification,

and reduced from 72 cents to 56, 54 and 52. The erecting of scaffolds—I might say one of the most important parts for the safety of the employes—that was classified as mechanics' work, and under this exhibit that is reduced from 72 cents per hour to 56, 54 and 52.

Q. Were they classified as car men under the National Agreement?

A. They were. The renewing of journal boxes and wedges, No. 14, classified under the National Agreement and by decision or order of the United States Railroad Administration as mechanics' work, received 72 cents per hour, and they were cut to a helper at 56, 54 and 52. The same applies to No. 15, applying journal lids. No. 18, wrecking. Under the classification and rules of the National Agreement all wrecking must be done by car men. Their rate was 72 cents per hour, and in some cases and at some points 77 cents per hour. The high rated man was included in that wrecker. The rate was cut to a helper, at 56, 54 and 52.

Q. Are their other classes of employment similarly reduced from the basis of car men under the National Agreement to that of helper on the lower rate of compensation under this regulation?

A. There are.

Q. How many car men were employed on the Pennsylvania System on or about the first day of July, 1921?

A. We had a reduction in force in 1921, and I dare say the car department was cut harder than any of the other departments. It would be very hard to determine just what the number was at that time, but approximately 10,000 or 12,000.

Q. Actively at work?

A. Actively at work.

Q. And a large number on furlough?

A. I dare say over fifty per cent. on furlough.

Q. What percentage of car men were affected by the reduction of rates mentioned by you?

A. At least 75 per cent. It might range as high as 78.

(No cross-examination.)

It is stipulated between the parties that representatives of the other four shop crafts involved, if called and sworn, would testify with respect to their crafts and the effect of the regulations, Exhibit No. 10, upon their wages as compared with those established by the decisions of the United States Railroad Labor Board substantially in the same manner as the witnesses Kutz and Berger have testified with respect to the crafts represented by them.

Mr. Hillquit: I now offer in evidence letters similar to those offered in evidence with respect to the cancellation of the leave of absence of the complainants Good and Kutz, these letters being letters with respect to the cancellation of the leave of absence of the complainants A. C. Myer and complainant A. H. Bixler.

(The Myer letters are marked "Complainants' Exhibit No. 14, C. F. P.")

(The Bixler letters are marked "Complainants' Exhibit No. 15, C. F. P.")

Complainants' Exhibit No. 14 reads as follows:

"PENNSYVANIA SYSTEM
Southwestern Region

Desk 1 — fs. Columbus, O. July 15, 1921.

Mr. A. C. Myer,
2242 Indiana Avenue,
Columbus, Ohio.

Dear Sir:

As a result of the election recently held, you

are no longer the authorized representative of the employes of this Region, whom you have heretofore claimed to represent, and your leave of absence for Committee work is hereby cancelled. You will report to your immediate superior, within ten (10) days from date of this letter (Monday, July 25th), for duty.

Please return at once the annual passes issued to you in connection with your work as former General Committeeman.

Yours truly,

T. B. Ferrington,
Master Mechanic."

"July 21, 1921.

Mr. T. B. Ferrington,
Master Mechanic, P. R. R. Shops,
Columbus, Ohio.

Dear Sir:

In reply to yours of July 15, cancelling my furlough and ordering me to turn in my system transportation, on account of my no longer representing the employees, who have according to your letter elected other representatives.

In this connection would like to call to your attention the fact that on June 18, 1921, there was presented to the United States Labor Board by System Federation #90, and ex parte statement, requesting an interpretation of Decision 119 as to the manner in which representatives should be selected.

June 29, the United States Labor Board issued Addendum #2 to Decision 119 which continued in effect all rules of the National Agreement, with the possible exception of the overtime rules, on all Railroads of the Country, pending the negotiations of new agreements.

Our representatives and those of the Pennsylvania Railroad appeared before the United States Labor Board July 8 and 9, 1921, and presented arguments to substantiate their different posi-

tions, decision on which has not as yet been rendered.

In view of the fact that this dispute is still pending, I cannot understand the position taken by the Company in this matter.

I further wish to call your attention to the action taken by the elected committee in St. Louis, July 12, 1921, who signified by their action that it was their desire that System Federation #90 negotiate rules and working conditions for the men of the several Crafts affiliated with it.

Further in making their presentation of the Board, the Company thru Mr. J. T. Wallis, Chief of Motive Power, read in a statement in opposition to the closed shop, which they claimed the National Agreement created. In assuming their present position the Company has virtually declared that a closed shop exists as far as the men who refused to vote the Company's ballot are concerned.

There is no question as to these men being in the majority, and by their present action the Company is now denying them the representation they desire, thereby, establishing a closed shop.

If my understanding of Addendum #2 to Decision 119 and the Board's telegram of July 29, to Mr. Atterbury, are correct, the National Agreement is still in effect, Rule #39 of which provides for leave of absence and transportation of representatives of employees.

In view of these facts I believe this matter should be given further consideration, and I would like very much to hear from you in this connection at my Pittsburgh address.

Yours very truly,

(Signed) A. C. Myer,
General Chairman—
Sheet Metal Workers."

ACM.MM

Complainants' Exhibit No. 15 reads as follows:

012.32

B. Harrisburg, Pa., January 22nd, 1921.

Desk 1.

Mr. E. J. Cleave,
Superintendent.

Dear Sir:

Your letter of December 6th, 1920, Desk 1. You are authorized to grant H. A. Bixler, Sheet Iron Worker, acting as Secretary-Treasurer of System Federation No. 90, Shop Crafts, a nine months' extension of his furlough, on account of his activities in the above named capacity.

Yours truly,
(Signed) G. LeBoutiller,
General Superintendent.

LBJ.1-24-21
In reply to your letter
of January 18th.
E. J. C.
C.J.Z...G.R.. 1-24-21.
To note and arrange accordingly.
JEW. L.B.J."

"012.32

Harrisburg, Pa., July 16, 1921.

Mr. H. A. Bixler,
Harrisburg, Pa.

Dear Sir:

The furlough which was granted you under date of January 22nd, 1921, has been withdrawn. Please arrange therefore to report to Mr. George Robinson, Foreman, Boiler Shop, Harrisburg, Pa., on or before July 25th, 1921.

Yours truly,
L. B. Jones,
Master Mechanic."

1.m.

"July 21, 1921.

Mr. L. B. Jones,
Master Mechanic—P. R. R. Co.,
Harrisburg, Pa.
Dear Sir:

I have yours of July 16th, advising that the furlough granted me under date of January 22nd, 1921, has been withdrawn. The letter of January 22nd, 1921, signed G. LeBoutillier, General Superintendent and addressed to E. J. Cleaves, Superintendent, which I have in my possession authorizes the extension of a nine month furlough on account of my activities as Secretary-Treasurer of System Federation #90.

The Company's action in with-drawing my furlough is not in compliance with my understanding of Decision 119. You are well aware that under date of June 29th, the United States Labor Board recognized that a dispute existed over the selection of representatives in accordance with Decision 119 on the Pennsylvania System, and Mr. Atterbury was notified by the United States Labor Board that Addendum #2 to Decision 119 would apply until such time that a decision would be handed down by this Board settling the existing dispute.

Addendum #2 to Decision 119 continued in effect the Rules previously recognized by the Pennsylvania System, and Rule #39 of these Rules provides a leaf of absence for those who are delegated to represent other employees.

According to my understanding of your letter a closed shop has been established and no employee is entitled to representation except by those designated on Company Ballot, by this act closing your doors to the majority of employees which we have clearly shown to the Labor Board we represent or consistent with the Pennsylvania Railroad Officials attitude before same Board July 8 and 9, 1921.

In view of the above statements and the existing conditions on the Pennsylvania Railroad,

would request that you arrange to continue in effect General Superintendent LeBoutillier's letter of January 22nd, by further consideration of this matter.

Yours very truly,
(Signed) H. A. Bixler,
Secretary-Treasurer."

HAB.MM.

"July 22nd, 1921.

Mr. L. B. Jones, Master Mechanic,
Pennsylvania Railroad,
Harrisburg, Pa.

Dear Sir:

I have been called on the 'phone several times by Mr. Cunningham's Office this date, advising me that you had informed him, by 'phone conversation, to get in touch with me and request of me to turn in my System Transportation.

Your letter of the 15th instant, advising me to report for work on or before July 25th, did not mention the cancellation of my System Transportation. Is it your desire that I turn in this transportation to Mr. Cunningham's Office or should I mail it direct to you?

Awaiting your answer, I am,
Very truly yours,
(Signed) H. A. Bixler
Secretary-Treasurer.

HAB.C.

"July 25, 1921.

Mr. L. B. Jones,
Master Mechanic, P. R. R. Co.,
Cor. Calder & Seventh Sts.,
Harrisburg, Pa.

Dear Sir:

I have this A. M. been called on the 'phone by Mr. Cunningham's Office and advised that you had requested Mr. Cunningham to inform me that I should return my System Transportation to you

immediately, and accordingly it is enclosed herewith.

Yours very truly,
(Signed) H. A. Bixler,
Secretary-Treasurer."

HAB-MM.
Enc.

"July 27, 1921.

Mr. L. B. Jones,
Master Mechanic, P. R. R. Co.,
Cor. Calder & Eleventh Sts.,
Harrisburg, Pa.
Dear Sir:

Yesterday I was called on the 'phone by Mr. Cunningham, who informed me that you had received my System Transportation and that he should request that I send you immediately my W.J.S. pass, also transportation held by Mrs. Bixler. Mr. Cunningham also informed me that I was out of the service.

I will arrange as soon as possible to have the transportation held by Mrs. Bixler sent your Office and enclose herewith my W.J.S. pass. This transportation is being sent under protest as it deprives me of the privileges of Addendum #2 to Decision #119.

I am at a loss to understand why this information has been conveyed to me by 'phone thru Mr. Cunningham's office instead of hearing direct from you.

Yours very truly,
(Signed) H. A. Bixler,
Secretary-Treasurer.

HAB.MM.
Enc.

G32

"PENNSYLVANIA SYSTEM
EASTERN REGION.
NOTICE OF DISCIPLINE

E.J.C.

Kindly approve and return.

7-25-21 L.B.J. Philadelphia Division.
July 25, 1921.

No. 011-222
Name, H. A. Bixler
Occupation, Sheet Metal Worker.
Discipline, Dismissal.
Date of Occurrence, July 25th, 1921.
Engine Train Place.
Outline of Offense. Disregard of instructions—Failed to report for duty as ordered by the Master Mechanic.
By order of the Superintendent. .....
The following must be signed by the Employe concerned:

This certifies that I was notified..... 192... that I would be disciplined in accordance with the above order, and that I understand that same will be put into effect....days from date or as soon thereafter as may be arranged.

.....
Date.....
This order was put into effect
Officer's
Signature.....
Original to be returned to.....
Copy to be retained by Employe."

"011.222
Harrisburg, Pa., July 26, 1921.

Mr. H. A. Bixler,
Room 414 Morewood Building,
East End, Pittsburgh, Pa.

Dear Sir:

Enclosed please find two copies of discipline notice, one copy to be signed and dated by you in the place underscored in red pencil and the other copy to be retained for your information. Please sign and return one copy in enclosed stamped envelope by return mail.

Yours truly,
L. B. Jones,
Master Mechanic."

1.m.

WILLIAM E. ELDER, having been duly sworn, was examined and testified as follows:

By MR. HILLQUIT:

Q. Where do you live?

A. Juniata, Pennsylvania.

Q. What is your occupation?

A. Boilermaker.

Q. Were you employed by the defendant, the Pennsylvania Railroad Company?

A. Yes, sir.

Q. How long were you in the service of that company?

A. Somewhere between fourteen and fifteen years.

Q. Beginning when?

A. I just can't recollect the year.

Q. When did you work last for the Pennsylvania Railroad Company?

A. January 29th, 1921.

Q. And you say you were in the service of that company for about fourteen years preceding that?

A. Preceding that; yes, sir.

Q. What happened on the date mentioned by you?

A. I was furloughed on that date in reduction of force.

Q. Were you again called to take employment?

A. I was.

Q. When?

A. August 13th, 1921.

Q. What representative of the Pennsylvania Railroad Company did you see in connection with it?

A. I was called into the office of the Juniata shops on that date, and called back into the Master Mechanic's office.

Q. Did you speak with the Master Mechanic about being put back to work?

A. Yes, sir.

Q. What did he say?

A. He handed me a book of their regulations, the new agreement they had made.

Q. I show you Complainants' Exhibit No. 10 and ask you whether the book shown to you was a copy of the one you have in your hand?

A. It was a copy of this book; yes, sir.

Q. What did he say in showing you this book?

A. He asked me if I had read the book and the regulations. I told him I had. Then he asked me if I was satisfied with them and understood them. I said, "Yes. All I want to." Then he handed me a paper, which I suppose, through the information I had, I was to sign, and I asked him if I was supposed to sign it, and he said, "Yes."

Q. I will show you the Complainants' Bill of Complaint, page 62, and ask you whether the paper shown to you contained substantially the language contained in that proposed agreement copied on page 62 of the Bill of Complaint?

A. Yes, sir.

Q. What did you say?

A. I told him I could not sign the agreement; that it was not satisfactory to me.

Q. Did you sign it?

A. No, sir.

Q. Were you re-employed?

A. No, sir.

Q. Did you look for other employment in your line of work?

A. I did, in the cities of Altoona and Juniata.

Q. Where you live?

A. Yes, sir.

Q. Did you find any?

A. I did not.

Q. Have you had any employment since on railroad companies?

A. Yes, sir.

Q. How long were you without employment after the date you refused to sign the proposed agreement and were not reinstated?

A. From August 13th, 1921, until November 10th, 1922.

Q. Did you authorize the complainants to institute this action in your behalf?

A. Yes, sir.

Cross-examination.

By Mr. Barnes:

Q. What do you mean by the statement that you authorized this action to be brought on your behalf? How did you do it?

A. How did I do it?

Q. Yes.

A. Well, like all other things that come under the law, I would have felt that I had been done an injustice according to the rulings.

Q. I did not ask you that. What did you do to authorize anybody to bring this suit for you?

A. What did I do? What do you mean, what did I do?

Q. In answer to your counsel you said that you had authorized this suit to be brought in your behalf. He asked you if you had, and you said "Yes." Did you understand his question?

A. Yes, sir.

Q. What did you do to authorize them to bring the suit? Who did you talk to and what did you say?

A. I talked to the officers of our organization.

Q. You just told them that you thought it was a good thing to do? Is that what you mean?

A. Sure.

Q. Are you a member of the Executive Council?

A. Of what Council?

Q. Of System Federation No. 90.

A. No, sir.

Q. You hadn't any relation of that sort with the System at all? You are just a member? Is that it?

A. A member. I have been an officer of the boilermakers' organization twice. That is all.

Q. What you did was to say to somebody that you would just as soon they would bring this suit? Is that the idea?

A. Yes, sir.

Re-direct-examination.

By Mr. Hillquit:

Q. You are satisfied with the suit being brought in your behalf, are you?

A. Yes, sir.

Q. Are you ready to prove whatever damages you may have sustained in this connection, are you?

A. Yes, sir.

Re-cross-examination.

By Mr. Barnes:

Q. What are you doing now?

A. Working for the Cambria and Indiana Railroad.

Q. As a boilermaker?

A. Yes, sir.

WILLIAM T. NEWELL, having been duly sworn, was examined and testified as follows:

By MR. HILLQUIT:

Q. Where do you live?

A. Trenton, New Jersey.

Q. What is your occupation?

A. Now?

Q. Yes.

A. Clerk.

Q. What was your occupation on the 1st day of July, 1921?

A. Passenger car inspector at the Clinton Street Station, Trenton, New Jersey.

Q. In the employ of the defendant, the Pennsylvania Railroad Company?

A. Yes, sir.

Q. How long had you been in the employ of the company?

A. Since 1905.

Q. Continuously?

A. Yes, sir.

Q. What was the rate of your pay under the decisions of the United States Railroad Labor Board on June 30th, 1921?

(Like objection by counsel for the defendants is made to this testimony as was made to similar testimony heretofore, and like ruling is made, and like exception granted.)

A. 80 cents an hour.

Q. Was it reduced by the decision of the United States Railroad Labor Board effective July 1st, 1921?

A. 8 cents an hour.

Q. Reducing it to how much?

A. 72 cents.

Q. After the regulations, Complainants' Exhibit 10, were put into effect did you receive the same pay?

A. No, sir.

Q. What did you get?

A. 68 cents per hour.

Q. Beginning what date?

A. August 1st, 1921.

Q. How long did you continue working for the company at that rate?

A. Until July 1st, 1922.

Q. How many hours per day did you work?

A. Eight.

Q. How many days per week?

A. Seven.

Q. Making 56 hours per week?

A. Yes, sir.

Q. And the difference in your pay was four cents an hour?

A. Correct.

Q. Making 2.24 per week?

A. Except some weeks, when—

Q. The weeks you did work at that rate it made a difference of $2.24?

A. Yes, sir. 32 cents a day for seven days.

Q. How many days did you work for the company at this reduced rate?

A. At a minimum, 265 days for 11 months.

Q. Why do you make it only 265 days?

A. Well, that is the minimum, because two days in the month I was gang foreman, for which I got the gang foreman's pay. There were 23 days in June of 1921 that I was gang foreman. So I put it at a minimum of 265 days as the time that I lost on my own account.

Q. At the rate of 32 cents a day? Is that correct?

A. Yes, sir.

Q. Making a total of $84.80?

A. I haven't got it figured out.

Q. You say you continued in the employ of the company until the first day of July, 1922?

A. I kept in the employ until July 1st, 1922. I worked on July 1st, 1922, from 12 o'clock at night until 7 o'clock in the morning.

Q. Then what happened?

A. I went out.

Q. On strike?

A. On strike?

Q. With the rest of the men?

A. Precisely so.

Q. Did you ever receive from the Pennsylvania Railroad Company the sum of $84.80 that you mentioned as the difference between the rate that you had been paid prior to August 1st and the rate after August 1st?

A. I never got more than 68 cents an hour.

Q. You did not get this amount, did you?

A. No, sir.

Q. Did you authorize System Federation No. 90 to institute this action in your behalf?

A. I certainly did.

Q. Are you satisfied now to have System Federation No. 90 continue the case for you and on your behalf and to recover for you the damage which you claim?

A. They never start anything that they don't try to finish.

Q. Are you satisfied?

A. Yes, sir.

Cross-examination.

By Mr. Barnes:

Q. As I understand you, on July 1st, 1921, the rates were reduced by the Labor Board?

A. On July 1st; yes, sir.

Q. And subsequently in the same month these rules and regulations were established, which fixed a lower rate of wages for you?

A. 68 cents.

Q. Those are the regulations which have been referred to as Exhibit 10, which is the agreement under which the railroad was then operating?

A. Yes. sir.

Q. And you continued to work and receive those wages during the balance of that year?

A. Yes, sir.

Q. Until July, 1922?

A. Yes, sir.

Q. On the scale established by those regulations?

A. Yes, sir.

Q. Then you struck?

A. Yes, sir.

Q. With the other men?

A. Yes, sir.

Q. Why did you go on strike? What was the reason for the strike?

A. Because they were not living up to the Railroad Labor Board's decision.

Q. What was the particular matter involved?

A. The particular matter involved was that we were not getting the money that was coming to us.

Q. That was not the reason for your strike, was it? It was not wages you struck about, was it?

A. At the call of System Federation No. 90.

Q. You struck because of the action of not recog-

nizing the Federation as the representative of the employees, didn't you?

A. Yes, sir.

Q. That is the reason you struck?

A. Yes, sir.

Q. Where did you get your orders to strike?

(Counsel for the complainants objects to counsel's characterization as "orders".)

Q. Where did you get your advice to strike?

(Counsel for the complainants objects to counsel's characterization as "advice".)

A. We took a vote on it.

Q. Who took a vote on it?

A. All the members.

Q. The members of this System Federation No. 90?

A. System Federation No. 90.

Q. When was that done?

A. I could not recall that date.

Q. Approximately?

A. I couldn't tell. Positively I could not tell, or approximately either.

Q. Was it six months before you struck?

A. I couldn't tell.

Q. You can tell that, can't you?

A. I couldn't tell whether it was six months or a year or nine months.

Q. It was more than six months, was it?

A. Well, I couldn't say.

Q. You said you could not tell whether it was six or nine months or a year. You have got a pretty wide choice. Which do you think it was?

A. Well, I would say it was about a year or nine months. Somewhere along there, or approximately that.

THE COURT: Is the date important? Probably some one can supply him with the date.

MR. HILLQUIT: It is admitted in the pleadings, if your Honor please, that it was on October 3rd, 1921, that the vote was taken. There is no dispute about that.

By THE COURT:

Q. That date has been given you. Does that refresh your memory as to the correct date?

A. I said about nine months. I suppose that would about cover it.

Q. As nearly as you know, that is right?

A. As nearly as I know; yes, sir. I can't say the exact date, because I don't know.

Re-direct-examination.

By MR. HILLQUIT:

Q. This strike vote which you said you took on the 3rd day of October, 1921, was taken on a bollot submitted to the members of System Federation No. 90?

A. Yes, sir.

Q. And was this the language of the ballot: "In the event the Pennsylvania Railroad System refuses to comply with Decision No. 218 of the United States Railroad Labor Board, shall a strike be authorized on a date to be later set?" Was that it?

A. Yes, sir. It read some way that way.

Q. And that was voted upon?

A. Yes, sir.

(It is agreed between counsel that Decision No. 218 was the order referring to the question of representative.)

WILMER B. VELDER, having been duly sworn, was examined and testified as follows:

By MR. HILLQUIT:

Q. Where do you live?

A. Harrisburg, Pennsylvania.

Q. What is your occupation?

A. Machinist.

Q. Are you a member of System Federation No. 90?

A. I am.

Q. Were you employed by the Pennsylvania Railroad Company?

A. I was.

Q. Between what dates?

A. I was employed at several different times. The first time I entered the service of the company it was in October, 1899, but I have not been in continuous service since then.

Q. When were you last employed by the company?

A. I last entered the service in February, 1920.

Q. And you continued in the service of the company how long?

A. Until July 1st, 1922.

Q. And then did you go out on strike?

A. I did.

Q. With the others?

A. Yes, sir.

Q. Did you authorize System Federation No. 90 to institute the prosecution of this case in your behalf?

A. Yes, sir.

Cross-examination.

By MR. BARNES:

Q. How did you do it?

A. Well, through action in the local.

Q. Where? What local is that?

A. No. 1070, International Association of Machinists, at Harrisburg.

Q. You mean you took a vote on it?

A. Yes, sir.

Q. What are you doing now?

A. Nothing.

COMPLAINANTS REST.

MR. BARNES: If the Court please, the defendants offer no evidence, and we now renew our motion to dismiss on the bill, answer and proofs.

OPINION.

SUR MOTION TO DISMISS BILL UNDER RULE 29 ON QUESTIONS OF LAW RAISED BY ANSWER.

SUR MOTION TO DISMISS ON BILL, ANSWER AND PROOFS.

SUR TRIAL HEARING ON BILL, ANSWER AND PROOFS.

(Filed Feb. 5th, 1924.)

DICKINSON, *J.*

The above rather formidable array of sub-headings is due to three ways in which the defendants are pressing their defence to this Bill. Rule 29 gives defendants the same right to present the questions of law raised by way of answer which could be raised by a motion to dismiss. The defendants have availed themselves of this right. When at the trial the plaintiffs rested their case, the defendants claimed their further right to move the dismissal of the Bill, in the nature of a motion for a non-suit, on the trial of an action at

law, to which trials of suits in Equity have now a likeness. Further, at the conclusion of the trial, the defendants asked for a decree dismissing the Bill on the finding of a want of equity. Such a decree includes all the grounds of all the motions and disposes of the whole case. There is in consequence no need to determine any other question than that of the decree which should be entered on trial. There were, however, trial questions raised on the admissibility of evidence which was received under Equity Rule 46. These may now be first ruled.

There are two essential elements which must be present to give a plaintiff the right to maintain a Bill as they are essential to the validity of a cause of action at law. These are injuria et damnum. The plaintiffs offered evidence of the damage claimed to have sustained. The defendants objected on the ground that as the plaintiffs had not shown a legal injury, evidence of damage was wholly irrelevant. The evidence, however, was admissible, as tentatively ruled on the trial, for the reason that as a plaintiff must show a damage he is permitted to do so, even although it is ultimately found he has sustained no legal injury. Moreover Rule 46 would require such evidence to be admitted to answer to all the purposes of the rule. Further, the admission, if the evidence of damage is of no effect, is innocuous to the defendant, and, if effective, is proper.

The objections are accordingly overruled, and an exception allowed to defendants.

The grounds advanced by defendants to support a decree of dismissal are many, some of which may be disposed of without discussion, leaving the main ground to be treated more at large. One ground is that these plaintiffs have no right to maintain this

Bill as a representative or class Bill. The dismissal of the Bill on this ground is refused. The same, or a substantially like ground, was urged in the case of Fenstemacher vs. R. R. Co. (unreported), and found to be untenable. To that ruling we adhere, with exception allowed to defendants.

Another ground is that the plaintiffs have an adequate remedy at law. The motion, so far as concerns this ground, is likewise denied, with the allowance of a further exception to defendants. The reasons for the ruling are too obvious to require statement.

Two of the other grounds may be compressed into the one, that no equities in the plaintiffs, growing out of a conspiracy charge, are disclosed by the averments of the Bill or shown by the proofs.

This question, so far as concerns this Court, has been ruled against the plaintiffs in the case of the Brotherhood of Clerks &c. vs. R. R. Co. (also unreported), except with respect to one point, hereinafter discussed, which was not before raised.

The remaining grounds are reiterations, in different modes of statement, of the averment of a want of equity in the complaint and the evidence by which it is supported. This is what we have called the main question.

Before entering upon the discussion of it, we wish to make acknowledgment of the helpful aid given us by witnesses and counsel. The former displayed intelligence, accompanied with frankness and candor, and counsel, as was to be expected from their high standing at the Bar, argued the questions discussed with not merely clarity but an intellectual honesty which induced them to accept the logic of the facts presented, whatever the consequences.

The fact situation presented is that which was be-

fore us in the Brotherhood of Clerks case (supra), although in the instant case other questions are raised than those raised by the conspiracy theory to which the Brotherhool case was in effect confined. The cause behind each case is the same. It is that cause which gives this case (as it did the other) importance and gives an excuse, as does the wealth of argument with which we have been favored, if it does not call, for a discussion of its merits, which would otherwise be of undue length.

The facts, in the sense of the evidentiary facts, are few, but as is almost always the case, the ultimate fact finding to be made and the considerations leading up to it, provoke a discussion which is almost unending because it can be presented in so many phases. This situation reminds us of the magic bottle in the Arabian Night's tale. The bottle itself was very small but when it was uncorked the genie released was of dimensions which covered the earth and filled the sky.

There is a great temptation which we might perhaps profitably indulge to make a number of general observations, the bearing of which, although more or less remote, is nevertheless near enough to save the comments from being purely academic. We, however, confine ourselves to one or more, the bearing of which is direct. Strife between employed and employer is a species of warfare which, like all other wars, often drags neutrals into woes and calamities greater than those suffered by the beligerents. Congress has, because of this, gone as far as it was felt to be wise to go, to aid in the peaceful adjustment of such disputes. These disputes, when they exist, are usually over wages or working conditions. A fair wage like the fair or so called market price of anything is commonly treated by economists as the commercial price resultant of the

operation of the law of supply and demand. What is meant by this is that this is the main and in the end the controlling force at work. Psychological effect however practically enters into it very largely and the artificial restraints of legal enactments, custom, general practices or public opinion importantly figure in the result. One, if not the chief value of market price, is that it is the expression of the general judgment or general opinion of what, under all the conditions present, is a fair price. This is expressed in monetary terms and presupposes a stable unit measure of value which supplies the terms employed. When this standard unit of measurement changes (as it does when the business of the country is run upon a forty cent dollar) the prices of many things, indeed most things, in which people deal commercially, reflect at once the change, because prices in those things quickly and almost automatically respond to the changed measure. Rates of wages, salaries and all measurements, expressed in terms of money, which are fixed by law by custom or by agreement, largely influenced by long established practices, do not thus quickly respond to the change, but are readjusted only upon presuasion. When the conditions of the situation are such as that the readjustment can be carried into the price of the product or can be, as the expression goes, "passed on to the consumer", negotiations for wage adjustments are smoothly and amicably conducted. Illustrations may be imagined and as readily found in actual practice. Room for suspicion sometimes exists that the "dispute" in such cases is more of a pretence than a reality. When, however, the increased cost of production cannot be thus reflected in the product price, effects at wage adjustment become a real strife because one party gives up or keeps what the other party

gets or does not get. If the people who pay the price of the product, kept in mind this necessary relation between what they pay and the cost of production, the public opinion, to which appeal is made, would be a that much better informed one. This is peculiarly true of carriers and of all public utilities as the relation of rates of wages to rates of charge for public service is a direct one.

Labor and capital, are both alike, although independently organized. Whatever else may be said about labor organization, there is no denial of its existence. One reason for its existence is the acknowledged necessity for it. Its most prejudiced opponents list this necessity first in the consideration of the labor problem, and its most zealous advocates name the same fact first among the arguments in its favor. Any one may well believe in the necessity for both labor and capital to be highly organized. Third parties, however, who are not directly concerned but who suffer when there is strife between them, do not see the necessity to organize them into independent and hostile camps when their interests are common and they are mutually dependent.

The difference in the attitude of employers toward organized labor divides them into classes. There is a class, or rather the nucelus of a class, the members of which see no need for those whose interests are common, to be organized into these independent and hostile camps. The organizers and managers of all ventures, into which the labor problem enters, must enlist the aid of both money power and man power. There must be contributions of both. The inducement to each contributor is a share in what the common product yields. The money power gets its share in the form of dividend checks; the man power return

comes in the form of wage checks. It is the job of the management to see to it that there is enough to satisfy both. No one will contribute his money to a venture except on these terms. Likewise no one will otherwise willingly contribute his labor. The labor problem is solved by the simple expedient of making both checks real dividend checks. No manager has any difficulty in getting the concept that the money investment in his keeping is held in trust for the owners. It is not a far cry to the like concept that he holds the man power which is likewise in his keeping on a like trust. The money part of the common investment is safeguarded by a perfected organization. The directorate commonly wholly represents it. The management apportions the care of it among departments, each with its responsible head. Why not give some part of a like care to the welfare and safeguarding of the interests of those who have contributed labor to the common capital fund? A management backed by a directorate in which the labor investors had representation and part would form the best possible Board of Arbitration or Labor Board and render all others unnecessary. The views of employers of this class are commonly thought to be too fanciful and too chimerical for general acceptance. It may be pointed out, however, that the scheme of central committees and of conferences between these representatives of labor and the managers is something of an approach to these views, and owes whatever merit it has and whatever success attends it wholly to this likeness.

The second class is made up of those who approve of independent labor organization because they see in it selfish advantage and convenience to themselves. They see a gain and prefer to deal with representatives of their employees, leaving the labor officials to

deal with the individuals. Out of this we get the phrases "Union Shop" and "Closed Shop".

The third class is composed of those who frankly are opposed to all such organizations and see in them no merit and no benefit to any one. They prefer and insist upon their right to deal with their employees as individuals and will tolerate no unionism. This gives us the expression "Non-Union Shop". It is also, so far as the employer can make it, a "closed shop".

The members of the fourth class concede to their employees the full right and liberty to organize or to remain unorganized, as they may see fit, and look upon labor organizations as they regard other organizations, religious, political, or of any kind as matters in which the employer has no direct concern. In their dealings, however, with their employees, they insist upon dealing with them as individuals, whether members or a labor organization or not. To plants of this kind there is given the name of "Open Shop".

There is also a fifth class, which is in one respect a sub-division of the second. Employers of this class limit their recognition of labor organizations and their dealings with their officials to organizations made up solely of their own employees. The number of employees compels a recognition of their representatives. In consequence such employers approve of the employees being organized and are willing to promote and aid them in every way, yet they insist upon the officials with whom they deal being themselves employees and resent the interference of any one between them and their employees who is a stranger to the employment.

This is essentially the attitude of the defendant company, and really bottoms the differences which have provoked this controversy. Out of this have sprung one or more minor differences which claim at-

tention. The main and these minor differences may be best brought into view by an outline fact statement. There is in the general plan of labor organization an interweaving and interlocking of organizations which gives to the system as a whole a seeming complexity. The general plan, however, is not unlike that of the organization of our several State governments and that of our Federal Union. There are local organizations which join in more general ones and these in turn into those of what may be called wider jurisdiction, very much like the organization of the people of a locality into Townships, these again into Counties, the Counties into States and the States into the Union. There is likewise the thought of the allegiance of the individual being present throughout all. What may be called the unit of organization does not however necessarily arise out of the relation of the individual members to a territorial locality, or to his employer, but to his craft, wherever his fellow craftsmen may be, or in whose employ they may be, although this unit may be made up of territorial or employment units.

The plaintiff organization is of this federated or union or what may be called parent type, membership in which or the individuals who owe it allegiance, not being territorially restricted or limited to those working for any one employer. At the inception of this controversy a very large percentage, perhaps as high as from 85 to 95 per cent. of the eligible craftsmen in the employ of the Railroad Company belonged to the plaintiff organization. The difference which came to the surface was, that most irreconcilable of all differences, one over conflicting principles. The attitude of the managers of the railroad was one of declared desire to consult with its employees and to confer with any representatives of their choice and of willingness

to render aid, financial or otherwise, to them in creating and supporting an organization among them. The Company, however, would not consult those who were not its employees, nor confer with the officials of an organization made up (among others) of members who were not such employees. The officials of the plaintiff organization stood out for the right of the men to make their own choice of representatives to act for them at the conference, whether these conferrees were employees of the defendant railroad or not. The supports of these opposing positions are on the part of the employer that his resentment is justified if, for illustration, he in Philadelphia, is forced to confer, on matters which concern only his employees and himself, with some man from Chicago or San Francisco, or, if the principle be conceded, from Liverpool, Paris, Berlin or Petrograd. On the other hand, it could well be urged on the part of the employees that there is that difference in the situation of employed and employer that any individual employee is very much handicapped, in any conference, by the thought that his livelihood and that of his family may be dependent upon his meeting the views of the employer, and that his interest in the conference should be committed to the less tremulous hands of a conferree who has no good reason to stand in awe of the power of the employer and that the most fitting representative of the employees is an organization made up of their fellow craftsmen without respect to by whom they are employed, and in all events the employees should have the free right to choose their own representatives, the choice of whom the employer has no more right to dictate than the employees would have to dictate who should represent the employer. This difference could not be reconciled and a strike resulted. The grounds of

it are tersely, although somewhat inaccurately, characterized as the refusal of the Company to recognize the plaintiff organization. A battle being thus on, the place of it was shifted to the presence of the Labor Board. The pivotal point in the jurisdiction of the Labor Board was evidently thought to be the existence of a dispute which could not be adjusted at a conference of representatives of the parties. Strategy indicated the personnel of the conferrees to be the point of vantage. The Company in consequence provided the machinery of an election for the choice of conferrees to represent the employees.

There were three features of the electoral plan now of importance. One was "regional" representation; another the conferrees chosen must be individuals, and the third that they must be employees. The Company backed one ticket. The plaintiff organization, at least to the extent of advising the form of ballot, supported another. The result was that some employees refrained from voting; an overwhelming majority voted for "Federation System No. 90", and a comparatively few votes were cast on the form of ballots provided by the Company for individual conferrees. The ballots for the plaintiff organization were thrown out and this vote ignored, and the Company recognized the individual conferrees for whom these few votes had been cast as conferrees chosen to represent the employees and agreed with them upon full scheme of wage payments and working regulations. Since then the Company has held to its position that there is no dispute between the Company and its employees but that their relations are harmonious, and in consequence there is no dispute to submit to the Labor Board. The plaintiff and other organizations claiming to represent the employees took sharp

issue with the Company and, asserting that there was a dispute, asked the Labor Board to intervene in aid of its adjustment. This the Labor Board proceeded to do by, among other steps, declaring the election held to be invalid, directing another to be held, and prescribing a form of ballot to be voted. In the meantime the Company, by Bill filed, sought to have the Labor Board enjoined from functioning. In this the Company was unsuccessful, but it has gone along the theory of its right to refuse compliance with the rulings of the Labor Board and to proceed upon its own fact averment that there is no "dispute" of which the Board can take cognizance. Aid has been given financially and otherwise to what is in effect the Company's own plan of organization of its employees, and an electoral plan has been put in operation by which thus far the Company has been able to maintain its position by making agreements with the thus chosen representatives of the employees.

In order to have the full position of the plaintiffs before us, it should be further stated that there is a money difference, as well as other differences of value to the employees, between what they get under these agreements, on which the Company stands but which the plaintiffs repudiate as frauds and pretenses, and what the employees would presumedly otherwise receive. As an illustration of one difference, figures may be taken which, although perhaps not mathematically accurate, may be accepted to present the point. Under the railroad administration a craftsman was paid at the rate of eighty-five cents an hour. Thereafter the carriers, by an application to the Labor Board, had it reduced to seventy-two cents. Under the agreements on which the Company stands, there was a further reduction to sixty-eight cents. There were like changes

made affecting seniority, lay offs, re-employments and other regulations. The aggregate decrease in the wage scale, as thus contracted, is shown to be large. There has been in consequence a damage.

This brings the whole question to the inquiry of whether there exists a legal injury. So far as this is averred to arise out of the charge of a conspiracy by the defendants to keep the employees out of what it is asserted they ought to have, we have already disposed of it. This was on the ground that no legal right was asserted. Rights and obligations, which are sometimes termed "extra legal" are recognized by everyone every where, except in a Court where only legal justice is dispensed. Indeed the man, who has no other than legal standards by which he guides his conduct, is commonly thought to hold to a low standard. If, however, he does no wrong which the law condemns, performs every duty which the law enjoins and asserts no rights other than what the law confers, the law cannot call him to account.

The point is now however made, for the first time, that this defendant has not performed every duty which the law enjoins in that it has refused and is continuing in its refusal to obey the mandate of the Transportation Act to confer with representatives of its employees, as it has been directed by the Labor Board to do. A call is in consequence made upon the judicial power to compel obedience to this mandate. This is the very power which it was admitted in the former case of the Courts did not possess but a distinction is now made (which will hereafter be discussed) between an interlocutory "order" and the final "decision" which the Board may make. It is still conceded that it is not the legal duty of the defendant to accept any final decision the Board may

render respecting what is a fair wage scale or fair working regulations, but it is asserted there is a legal duty to obey any interlocutory order to confer and to confer with conferrees who are decided by the Board to be the duly chosen representatives of the employees.

A further right or cause of action is also now asserted. It is in the last analysis, that, by what is called the "National Agreement", the employees here concerned had a legal right to the wages and other benefits called for by that agreement, and, by the provisions of the Transportation Act, the terms of the National Agreement could not be changed except by consent of the parties, or their representatives in conference, or what is the same thing through an acceptance of a ruling of the Labor Board. The defendant Company had in consequence no legal right to affect its employees by any changes in the National Agreement unless there was another agreement reached through a conference between duly chosen representatives of carrier and employees. If this be the right view, then the National Agreement (as afterwards changed by an accepted ruling of the Labor Board) is still in force, unless those who agreed to the wage scale, which the carrier has now in force, were duly chosen by the employees to represent them at the conference.

This would reduce the whole question to the one of the validity of the election held. The argument supporting the first position is that the Transportation Act did not, as had been done by previous Acts, provide for a voluntary submission of disputes to arbitration, but made it mandatory upon carriers to confer with their employees as set forth in the Act. It is true that what agreement should be made, might become the subject of a ruling by the Labor Board,

which the parties were free to accept or reject, but this did not believe them from the mandate of the law to hold the preliminary conference. The distinction is that before made between "orders" made by the Labor Board, to enable it to reach a decision, and the "decision" reached, and further is that the Courts can enforce by appropriate process compliance with the "orders", although they cannot compel acceptance of the "decision".

The conclusion we are asked in this case to draw comes to this, that the carrier is committing a continuing legal wrong, for which the injured parties have the legal right to call it to account, unless all disputes with its employees have been adjusted, and they have not been unless the election held was a valid one. If the finding we are asked to make were that the plaintiffs had the right to decision of the Labor Board and all the advantages which would flow therefrom, it could easily be made. We are prepared to go in one respect much further than counsel for plaintiffs thought it tactful to go.

There is no question of an invasion of private rights involved in the regulation by law of the management of a railroad because every railroad is a public highway which is committed to the custody, care and operation of the Company, or its managers, for public use, and there is the highest authority for the statement, which every Pennsylvanian lawyer would accept, that such public highway is no more the private property of the railroad Company than a public road belongs to the township supervisors in whose charge and care it is. We are not, however, dealing with the question of control of the highway, or with its management, but with a question of contract. Certainly no Court has any warrant to make a contract

for parties who are sui juris, or even to tell them what contract they ought to make. There is the same obstacle in the way of ordering a conference out of which a bargain may come. Of course, if Congress has made it the legal duty of a party to confer, he must confer. Ita lex legit. Even conceding this, the admitted fact is that the defendant has conferred if there were duly chosen representatives of the employees present. Some one must resolve this "if". The highest judicial authority (Pennsylvania vs. Labor Board, 261 U. S. 72), has found the Labor Board may do this, and they have resolved it in favor of the plaintiff. All danger of a conflict of findings has been avoided by the ruling of the same high authority which has declared that no Court can review or meddle with what the Labor Board has done.

The whole question is thus brought, as counsel specifically admitted at the argument, to the question of whether the Court has power to enforce the "orders" of the Labor Board. We have chosen the word advisedly to present the distinction between process to enable a tribunal to function and process to enforce a judgment reached. The distinction thus far is a sound one. An illustration is the loan of subpœna process and of attachment process to secure testimony and evidence to be taken under letters rogatory or the like. One Court will thus aid another when there would be no thought of the enforcement of the final judgment reached upon the evidence thus obtained. The difference between an interlocutory order and a final judgment cannot be determined by the test of a difference in mere verbiage. Both expressions, as are most expressions, are relative. A ruling may be interlocutory in its one relation, and a final judgment in its relations with something else. This order or

decision, whatever it may be called, of the Labor Board was a final judgment in its relation to the holding of a conference. It may appropriately be called interlocutory in relation to any decision which the Board may make respecting a wage scale or working condition.

Our power to do what we are asked to do, is best discussed in a plain statement of what it is. Thus plainly stated it is to extend the aid of the Court to compel the doing of what the Board has ruled should be done. This is the very thing which we have been explicitly told we have no power to do. We, therefore, conclude that this Court is without power to compel the defendants to obey the orders of the Labor Board.

The one question left is whether the contractual status, which for brevity will be called that of the National Agreement, remains as a binding force upon the defendant Company.

The fact is found that the defendant is not complying with that agreement, and that a pecuniary and other damage is thereby suffered by the employees if the Company agreement is not in force.

We have already more than reached the length limits of an opinion and because of this will restrict the further discussion to what is almost a bare statement of the conclusion reached.

The view we take is, as already expressed in several different forms, that the only rights or duties we can consider are the legal rights or legal duties of the parties. These arise in this case wholly out of contracts. The National Agreement and the modification by the Labor Board which followed it, having been accepted and followed by the defendants, there would be an implied contract, on its part, to pay its several

employees accordingly. There was no agreement to continue these payments for any length of time. When, therefore, the defendants refused to continue the payments and announced that it would not thereafter pay them, but that payments would be on another and different basis, and since that time it has so paid them, and the individual employees have accepted the payments, we cannot find that there was a contract or is any legal obligation of the defendant Company to pay more.

It will be observed that this conclusion is limited and restricted to the consideration of the legal obligation of debt arising out of contracts made between man and man because, as we find, this Court is not permitted to take any other view.

The other view is not that of a contract between an individual employer and each individual employee, with each enjoying the liberty, which the law gives them, of freedom to contract, but is a wholly different view taken from the viewpoint of the public interests and is that employed and employer should each, in the public interest, forego some part of their legal rights and be contented with whatever bargain chosen representatives may make for them, and failing this be content with whatever the Labor Board decided ought to be done. With the latter kind of "agreements" Courts of Law have nothing to do unless and until the parties have so agreed by accepting them. The law cannot be otherwise because, if it were, a man might be compelled by law against his will to work at a wage scale or under working conditions which were unsatisfactory to him merely because some one else said he ought to be satisfied. Let it not be lost sight of that the position of the parties to such a "dispute" may at any time be reversed.

The conclusion reached is that the Bill be dismissed, with costs, and an exception allowed to plaintiffs.

No decree is now made however but either party has leave to submit the draft of a decree in accordance herewith, with further leave to the parties to submit requests for findings of fact and conclusions of law to be answered and the answers incorporated herewith, jurisdiction of the cause being retained for this purpose.

DECREE.
(Filed Feb. 8, 1924.)

This case having been heard upon Bill, Answer and Proofs, and upon consideration thereof

IT IS ORDERED, ADJUDGED AND DECREED that the Bill be and the same is hereby dismissed, and that defendants recover from plaintiffs their costs herein expended.

By THE COURT,

(Sgd.) DICKINSON,
Judge.

Approved as to form:

(Sgd.) DAVID WALLERSTEIN,
Attorney for Complainants.

(Sgd.) JOHN HAMPTON BARNES,
Attorney for Defendants.

PETITION FOR APPEAL.
(Filed Feb. 11, 1924.)

To the Honorable, the Judges of the District Court of the United States for the Eastern District of Pennsylvania:

The above named complainants, Pennsylvania Railroad System and Allied Lines Federation No. 90, Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90, and N. Plummer Good, individually and as President of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council thereof, H. A. Bixler, individually and as Secretary-Treasurer of Pennsylvania System and Allied Lines Federation No. 90 and member of the Executive Council thereof, Charles Kutz, Walter P. Weller, Raymond J. Dorson, Arthur C. Myer, George W. Woomer and Alfred J. Burger, individually and as members of the Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90, Rome La Fontain, Henry Rothermill, George Cramer, Jacob Kern and F. M. Keech, considering themselves aggrieved by the Order and Decree entered
1924, in the above entitled case, do hereby appeal from said Order and Decree to the United States Circuit Court of Appeals for the Third Circuit for the reasons specified in the Assignments of Error filed herewith; and they pray that this appeal may be allowed and a citation issued as provided by law, and that a transcript of the record, proceedings and papers upon which said Order and Decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals at Philadelphia, Pa.; and desiring to supersede the execution of the decree

the petitioners hereby tender their bond in such amount as the Court may require for such purpose, and pray that said appeal may act as a supersedeas.

Pennsylvania Railroad System and Allied Lines Federation No. 90,
Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90,
N. Plummer Good, individually and as President of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council thereof,
H. A. Bixler, individually and as Secretary-Treasurer of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council thereof,
Charles Kutz,
Walter P. Weller,
Raymond J. Dorson,
Arthur C. Myer,
George W. Woomer and
Alfred J. Burger,
individually and as members of the the Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90,
Rome La Fontain,
Henry Rothermill,
George Cramer,
Jacob Kern,
F. M. Keech,

By David Wallerstein,

Attorney.

ORDER.

Before DICKINSON, *J.*

AND Now, to wit:—this 11th day of February, 1924, upon reading the foregoing petition for appeal, it is upon motion of David Wallerstein, Esq., Solicitor for Petitioners-Appellants, ORDERED by the Court that the appeal prayed for therein be and the same is hereby allowed and that said appeal shall act as a supersedeas upon the petitioners filing a bond in the sum of $200.00, to be conditioned as required by law.

By THE COURT,

Attest:

GEORGE BRODBECK,
Clerk.

ASSIGNMENTS OF ERROR.
(Filed Feb. 11, 1924.)

AND Now, comes the above named Complainants, Appellants, and all of them, by their Solicitor, David Wallerstein, Esq., and in connection with their appeal say that in the record, proceedings and final decree manifest error has been committed to the prejudice of the said Appellants, and all of them, as follows, to wit:

1. That the learned Court below erred in entering the decree herein, dismissing the Bill of Complaint filed herein by the said Complainants, said decree being as follows:

"DECREE.

This case having been heard upon Bill, Answer and Proofs, and upon consideration thereof IT IS ORDERED, AJUDGED AND DECREED that the Bill be and the same is hereby dismissed,

and that the defendants recover from plaintiffs their costs herein expended."

2. The learned Court below erred in not entering a decree granting to the Complainants-Appellants herein, the relief prayed for in their Bill of Complaint.

DAVID WALLERSTEIN,
Solicitor for Complainants-Appellants.

STIPULATION RE: TRANSCRIPT OF RECORD.
(Filed Feb. 11, 1924.)

To the Clerk of the United States District Court:

In the transcript of the record of the above cause on the appeal of Pennsylvania Railroad System and Allied Lines Federation No. 90, et al., the Complainants, to the United States Circuit Court of Appeals, you will please include:

Bill of Complaint.
Answer.
All of the testimony.

The following Exhibits:

Constitution and By-Laws of System Federation No. 90, offered on Page 8 of the record, Complainants' Exhibit No. 1.

Constitution and By-Laws of System Federation No. 90, offered on Page 11 of the Record, Complainants' Exhibit No. 2.

Stenographic transcript of conference held on May 24, 1921, offered on Page 34, of the Record, Complainants' Exhibit No. 3,

Official Ballot, offered on Page 35, Complainants' Exhibit No. 4.

Letters, Complainants' Exhibits Nos. 5, 6, and 7, offered on Page 37.

Ballot, Complainants' Exhibit 8, offered on Page 66, By-Laws of the Association of Shop Craft Employes, offered on Page 82 of the record, Complainants' Exhibit No. 9.

Regulations for the Government of Machinists, etc., offered on Page 85, Complainants' Exhibit No. 10.

Ballot, Complainants' Exhibit No. 11, offered on Page 91.

Agreement between U. S. R. R. Administration and Railway Employes' Department, offered on Page 116, Complainants' Exhibit No. 12.

Letter dated July 24, 1921, from Megel to Kutz, Complainants' Exhibit No. 12.

Letter dated July 21, 1921, from Myer to Ferrington, Complainants' Exhibit No. 14.

Letter dated July 26, 1921, from Jones to Bixler, Complainants' Exhibit No. 15.

Opinion of Dickinson, J., filed February 5, 1924.

The decree of the Court.

Petition of Complainants for Appeal and order allowing Appeal.

Assignments of Error, Citation and request as to transcript of Record;

And no others.

DAVID WALLERSTEIN,
Solicitors for Complainants-Appellants.

JOHN HAMPTON BARNES,
Solicitor for Defendants-Appellee.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYIVANNIA, } *Set*:

I, GEORGE BRODBECK, Clerk of the District Court of the United States for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of so much of the pleas and proceedings; in the case of Pennsylvania Railroad System and Allied Lines Federation No. 90, etc., v. The Pennsylvania Railroad Company, et al., No. 2875, September Term, 1923; as per stipulation filed, a copy of which is hereto attached, the transcript of record in the above entitled cause is to include, now remaining among the records of the said court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said District Court at Philadelphia,
(Seal) this 14th day of February in the year of our Lord one thousand nine hundred and twenty-four, and in the one hundred and forty-eighth year of the Independence of the United States.

GEORGE BRODBECK,
Clerk.

PLAINTIFFS' EXHIBIT No. 1.

CONSTITUTION AND BY-LAWS
OF
SYSTEM FEDERATION No. 90
OF THE
PENNSYLVANIA SYSTEM AND ALLIED LINES
of the Railway Employes Department of the American Federation of Labor.

PREAMBLE.

To bring within its folds every trade in the railroad shops within its jurisdiction. We have been taught by experience that unity of action is imperative and absolutely essential for the success of railroad trades. To adopt and carry out a plan that shall bring all railroad trades in competitive territory together, thereby preventing strikes of one organization at a time, and by concerted action all shall reap full benefit of their labor. To establish the eight (8) hour work day and the minimum rate of wages, the abolition of physical examination and personal records and discrimination against railroad employes, and such other matters as concern the welfare of all.

PLATFORM

We recognize twelve questions of general character, viz:

1. A minimum rate of wages per hour.
2. Maximum of eight hours to constitute a day's work.
3. Rate of pay for overtime, Sundays and Holidays included.
4. Method of handling grievances.
5. Provisions to be made for old employes.

6. Abolition of relay system.

7. Abolition of age limit.

8. Regulation of apprentices.

9. That no physical examination be required of applicants for employment.

10. Applicant for employment will only be required to give name and address of relatives.

11. That we go on record in favor of the abolition of piece work.

12. To bring about a National Agreement, as we believe this will mean a more permanent and stable condition, acceptable to employe and employer and general public alike. The operation of railways coming more and more under supervision of the government, the standardization of freight and passenger rates, makes for the standardization of pay for employes on all roads. Hence the necessity of a National Agreement, which may, if necessary, be divided into sections.

To these twelve questions we pledge our earnest co-operation.

ORDER OF BUSINESS.

1. Call to order by the President.
2. Presenting credentials of officers and delegates.
3. Reading Minutes of previous meeting.
4. Reports of Officers and Delegates.
5. Appointment of Committees.
6. Reports of Committees.
7. Reading communications and bills.
8. Unfinished business.
9. New business.
10. Welfare of the Federation.
11. Election and installation of Officers.
12. Report of Secretary-Treasurer of receipts and expenditures and balance on hand.
13. Adjournment.

BY-LAWS.

Article I.

This organization shall be known as the System Federation of the Pennsylvania Railroad System and Allied Lines.

Article II.

Government and Representation.

Section 1. The laws of this body shall in no way usurp or conflict with the constitution of the National or International Lodges of their respective organizations, or Railway Employes Department.

Sec. 2. Amendments to these By-Laws may be made by any Local Federation Board when approved by one other Local Federation Board and then submitted to the Secretary of the System Federation; he shall then submit same to the lodges affiliated with the System Federation and if receiving a majority vote it shall become a law, subject to the approval of the Railway Employes Department.

Sec. 3. As long as any two crafts of the affiliated organizations continue in this System Federation, same shall be continued.

Sec. 4. Any of the affiliated organizations becoming three (3) months in arrears with their per capita tax due this System Federation, shall be suspended and must pay all arrearages to date before becoming entitled to any benefits of this System Federation.

Sec. 5. This body shall consist of three (3) members from each craft affiliated, which shall constitute the System Federation Advisory Board. They are to be elected annually by their respective craft and each craft to be entitled to equal voting power on the System Federation Advisory Board.

Sec. 6. Any craft wishing to affiliate with the System Federation may make application at any time, and shall be admitted to membership by a majority vote of the voting strength of this Federation as per Section 5, Article II.

Article III.

System Federation Advisory Board and Its Duties.

Section 1. All questions acted upon by the System Federation Advisory Board shall be decided by a majority vote, except upon the question of sending out a call for a strike vote, which shall require a two-thirds vote of the Board. Their decision upon all crafts affiliated shall be binding, subject to approval of the Railway Employes' Department.

Sec. 2. In the event of a controversy arising between the affiliated crafts or lodges which can not be adjusted by their own efforts, an appeal may be made to the System Federation Advisory Board.

Sec. 3. Any craft having a grievance with the management and failing to secure a satisfactory adjustment of same individually, must submit said grievance to the Local Federation Advisory Board; if approved, the same shall become a joint grievance; if disapproved, the same shall be declared at an end.

Sec. 4. A decision of the System Federation Advisory Board shall be final, except that the aggrieved craft shall have the right to appeal to the Executive Council of the Railway Employes' Department, whose decision shall be final.

Sec. 5. All disputes or grievances submitted to the System Federation Advisory Board shall be through the Secretary and must be in writing and bearing the seal of the craft presenting same.

Sec. 6. No individual craft shall present agree-

ments, or no individual craft action will be taken, without first having the sanction of the System Federation Advisory Board and the Railway Employes Department.

Sec. 7. Any lodge or a member of a System Federation Advisory Board, or other officer, who does an act, or is the instrument through which an act is perpetrated, injurious to the Federation, or to the interests of Labor in general, may be prosecuted in the following manner: Charges shall first be preferred by a member of the System Federation, in writing, stating the offense committed, and a copy thereof, under the seal of the accusing craft, shall be forwarded to the accused. Such charges shall be referred to the System Federation Advisory Board, who shall investigate the charges and report without unnecessary delay, in the following words: "There seems to be foundation for the charge." If the defendant be a lodge, the System Federation Advisory Board shall convene in executive session to try the defendant. If found guilty by a two-thirds vote, the System Federation Advisory Board shall submit the matter together with the findings and evidence to the President and Executive Council of the Railway Employes' Department, who shall make final disposition of same, the System Federation Advisory Board to be notified officially of action taken. If the defendant be a member of the System Federation Advisory Board, he shall, on the System Federation Advisory Board reporting, "There seems to be foundation for the charge," stand suspended without trial and his case be at once referred to his lodge for trial. Said lodge shall at once be furnished with a copy of these charges and the name and addresses of witnesses examined.

ARTICLE IV.

Officers and How Chosen.

Section 1. The officers of this System Federation Advisory Board shall consist of a President, four Vice Presidents and a Secretary-Treasurer, who shall be elected from the members of the System Federation Advisory Board and who shall hold office for one year, or until their successors are duly elected and installed. No two officers to be chosen from one craft. Any member one year or more in good standing in his craft and has worked six months or more in his jurisdiction shall be eligible to serve on the System Federation Advisory Board, or hold office on same.

Sec. 2. Should a vacancy occur on the System Federation Advisory Board, the local Secretary shall immediately notify the Secretary of the System Federation Advisory Board, who shall at once notify the lodge he represented to immediately elect his successor. All members of the System Federation Advisory Board elected to fill a vacancy to be approved by the System Federation Advisory Board at a regular meeting, subject to the qualifications as stated in Section 1 of this Article.

ARTICLE V.

Installation and Obligation.

Section 1. Upon my honor, I..... will, to the best of my ability, fulfill the duties devolving upon me as an officer and committeeman of this System Federation and I will at all times act in my assigned capacity to the best interests of this System Federation and the Labor movement in general, and I further promise that I will not defraud this System Federation to the extent of anything. I further prom-

ise that when my successor is duly elected and installed, that I will turn over to my successor in office all papers, books, money and other property of this System Federation.

ARTICLE VI.

Duties of Officers.

Section 1. It shall be the duty of the President to preside at all meetings, to preserve order and enforce the laws thereof. He shall decide all questions of order, subject to appeal to the body. He shall keep a correct record of all work performed by him and make an annual report to the members of the lodges affiliated. He shall carry out instructions he may receive from the majority of the System Federation Advisory Board. He shall countersign all orders drawn on the treasury by the Secretary.

Sec. 2. There shall be one Vice President whose duty it shall be to assist the President in preserving order and who shall preside in his absence. In case of a vacancy, the Vice President shall be chosen to fill out his unexpired term; the Vice Presidents shall fill the office of Active President in the order in which they were elected, by majority vote of the Board.

Sec. 3. The Secretary-Treasurer shall keep a correct record of all meetings of the System Federation Advisory Board and carry on all correspondence. He shall receive all funds from whatever source and shall render a semi-annual report showing receipts and expenditures during the year to all lodges affiliated. He shall deposit all moneys in some reputable banking institution in the name of the System Federation, such money to be subject to check of the Secretary-Treasurer, countersigned by the President of the System Federation. The Secretary-Treasurer's books shall

be audited by a committee of one from each craft at the annual meeting and thereafter every three months by the nearest Local Federated Board to the city in which he is located. The Secretary-Treasurer shall receive for the faithful performance of his duties a salary of One Hundred ($100.00) Dollars per year, payable quarterly, and shall give bond in the sum of not less than Ten Thousand ($10,000.00) Dollars, said bond to be approved and retained by the President of the System Federation, the System Federation to pay for the bond.

Sec. 4. All committees shall be appointed by the President, one from each craft, subject to the approval of their respective crafts.

Sec. 5. Officers of this System Federation, when called out on business concerning the System Federation shall receive Ten ($10.00) Dollars per day for their services and expenses.

Article VII.

Strikes.

Section 1. An affiliated craft going on strike without the sanction of the System Federation Advisory Board will forfeit the support of the System Federation.

Sec. 2. The System Federation Advisory Board shall have the power to call a strike of all affiliated crafts after all means have been used to settle the matter in dispute and after securing affirmative vote of the membership and sanction of their respective National and International Lodges and the Railway Employes' Department.

ARTICLE VIII.

Appeals.

Section 1. In the event a controversy arises between an affiliated craft and the management which cannot be adjusted by their own efforts, an appeal will be made to the System Federation Advisory Board through the President, but in no case will an appeal be recognized until such craft has taken their grievance at least as high as the Master Mechanic of the Division or Master Car Builder of the Division.

ARTICLE IX.

Revenue.

Section 1. The revenue of this System Federation shall be provided for by a per capita tax of 3 cents on each member of each craft, per month, payable in advance, the same to be collected through the Secretaries of the districts and Joint Protective Boards of each craft. Where there are no districts the local Secretaries shall pay the per capita tax on the number of members they represent at these points. The per capita tax shall become effective as of July 1, 1918.

ARTICLE X.

Meetings.

Section 1. This System Federation shall meet regularly once each year. The time and place of meeting to be decided by a majority number of the System Federation Advisory Board members before adjournment of the regular meeting. The System Federation Secretary to give due notice to each affiliated lodge.

Sec. 2. All district and joint protective board meetings shall be held in the same city a day previous

to the convening of the System Federation for the purpose of transacting their respective business and formulating their special rules, which shall be submitted to the System Federation for approval.

Sec. 3. When a special meeting is necessary, the President shall call same, which must be approved by a majority vote of the System Federation Advisory Board.

ARTICLE XI.

Expenses.

Section 1. The expenses of the delegates to the System Federation shall be borne by their respective crafts.

ARTICLE XII.

Quorum.

Section 1. Nine delegates shall constitute a quorum, except as provided for in Article II, Section 3, when five delegates shall constitute a quorum.

LAWS TO GOVERN LOCAL FEDERATED ADVISORY BOARDS.

Section 1. At all division points where a sufficient number of members of crafts affiliated with the System Federation are employed, they shall form a local Federated Advisory Board to be composed of an equal number of craftsmen from each craft; provided, there shall not be to exceed three members from each craft, each craft to have equal voting power regardless of the number of delegates.

Sec. 2. This body shall be known as a Local Federation Advisory Board of the System Federation and shall hold meetings at least once a month.

Sec. 3. The officers of the Local Advisory Board shall be President, Vice President and Secretary.

Sec. 4. The Secretary of the Local Advisory Board shall be the official correspondent between the Local Federated Advisory Board and the System Federation officers and shall conduct all correspondence as such.

Sec. 5. The Local Advisory Board shall not have authority to incur expense chargeable to the System Federation, unless authorized by the System Federation Advisory Board.

Sec. 6. Secretaries of Local Advisory Boards shall send to the Secretary of the System Federation Advisory Board a monthly report the first of each month. Forms will be furnished for this purpose.

Sec. 7. These By-Laws adopted shall supersede all other By-Laws now in force.

COMMITTEE ON LAW,

Edw. Vollmer, Chairman; W. F. Hershey, W. W. Pinkerton, E. G. Hauer, R. C. DeLauder and John F. Whalen.

Approved July 24, 1918.

A. O. WHARTON,
President Ry. E. Dept. of the A. F. of L.
Per JOHN SCOTT, Secretary.

PLAINTIFFS' EXHIBIT No. 2.

CONSTITUTION AND BY-LAWS
OF
SYSTEM FEDERATION No. 90
OF THE
PENNSYLVANIA RAILROAD SYSTEM AND ALLIED LINES
of the Railway Employes Department of the American Federation of Labor.

Revised and adopted at Newark, N. J., July, 1920.

N. P. Good, President.
L. B. Webb, Vice-President.
A. J. Burger, Second Vice-President.
N. M. Jones, Third Vice-President.
R. J. Dorson, Fourth Vice-President.
H. A. Bixler, Secretary-Treasurer.
Office, 227 Walnut Street
P. O. Box 173 Harrisburg, Pa.

OFFICERS OF SYSTEM FEDERATION No. 90

N. P. Good, President.....P. O. Box 324, Pitcairn, Pa.
L. B. Webb, First Vice-President
337 W. DeWald Ave., Ft. Wayne, Ind.
A. J. Burger, Second Vice-President
P. O. Box 898, Harrisburg, Pa.
N. M. Jones, Third Vice-President
426 Crescent St., Harrisburg, Pa.
R. J. Dorson, Fourth Vice-President
1513 Brickell Ave., Olean, N. Y.
H. A. Bixler, Secretary-Treasurer
P. O. Box 173, Harrisburg, Pa.

EXECUTIVE COMMITTEE, SYSTEM FEDERATION No. 90

C. T. Foster....411-12 Ferguson Bldg., Pittsburgh, Pa.
W. F. Hershey.....530 3rd St., Pitcairn, Pa.
H. C. Baker.....P. O. Box 943, Uhrichsville, O.
A. J. Burger.....P. O. Box 898, Harrisburg, Pa.
A. C. Myer.....2242 Indiana Ave., Columbus, O.

G. W. Woomer.....519 Bell Ave., Altoona, Pa.
N. P. Good.....P. O. Box 324, Pitcairn, Pa.
H. A. Bixler.....P. O. Box 173, Harrisburg, Pa.
N. P. Good.....P. O. Box 173, Harrisburg, Pa.

ADVISORY BOARD MEMBERS, SYSTEM FEDERATION No. 90

MACHINISTS

N. P. Good.....P. O. Box 324, Pitcairn, Pa.
J. Quilter.....1012 W. State St., Olean, N. Y.
L. Hoffman.....2422 George St., Logansport, Ind.

BLACKSMITHS

W. F. Hershey.....530 3rd St., Pitcairn, Pa.
F. M. Davis.....107 Eastport Ave., Uhrichsville, O.
R. J. Dorson.....1513 Brickell Ave., Olean, N. Y.

BOILERMAKERS

H. C. Baker.....P. O. Box 943, Uhrichsville, O.
N. M. Jones.....426 Crescent St., Harrisburg, Pa.
W. P. Weller.....1211 19th Ave., Altoona, Pa.

CARMEN

A. J. Burger.....P. O. Box 898, Harrisburg, Pa.
W. H. Eberle.....3262 Linwood Ave., Cincinnati, O.
W. W. Pinkerton.....P. O. Box 898, Harrisburg, Pa.

SHEET METAL WORKERS

A. C. Myer.....2242 Indiana Ave., Columbus, O.
H. J. Barth.....2 Spring St., Covington, Ky.
H. A. Bixler.....P. O. Box 173, Harrisburg, Pa.

ELECTRICIANS

G. W. Woomer.....519 Bell Ave., Altoona, Pa.
L. B. Webb.....337 W. DeWald Ave., Ft. Wayne, Ind.
A. E. Hart.....204 E. Holly Ave., Pitman, N. J.

SECRETARIES-TREASURERS OF THE SIX DISTRICT LODGES AND PROTECTIVE BOARDS

MACHINISTS

W. A. Canfield.411-12 Ferguson Bldg., Pittsburgh, Pa.

BOILERMAKERS

W. P. Weller.....1211 19th Ave., Altoona, Pa.

BLACKSMITHS

F. M. Davis.....107 Eastport Ave., Uhrichsville, O.

CARMEN

W. W. Pinkerton.....P. O. Box 898, Harrisburg, Pa.

SHEET METAL WORKERS

W. L. Blake.....P. O. Box 251, N. S. Pittsburgh, Pa.

ELECTRICIANS

L. B. Webb.....437 W. DeWald Ave., Ft. Wayne, Ind.

LIST OF AFFILIATED ORGANIZATIONS

International Association of Machinists.

International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America.

International Brotherhood of Blacksmiths, Drop Forgers and Helpers.

Amalgamated Sheet Metal Workers International Alliance.

Brotherhood of Railway Carmen of America.

International Brotherhood of Electrical Workers.

PREAMBLE

To bring within its folds all trades in the Mechanical Section of Railway Employes Department within its jurisdiction. We have been taught by experience that unity of action is imperative and absolutely essential for the success of the Railroad Trades. To prevent strikes of one organization at a time and by concerted action all shall reap the full benefit of their labor. To cherish, protect and promulgate our interests and rights as workers: To maintain the eight (8) hour work day and the minimum rate of wages, the abolition of physical examination and personal record

and discrimination against railroad employes, and such other matters as concern the welfare of all.

We recognize twelve questions of general character, viz:

PLATFORM

1. A minimum rate of wages per hour, for all employes including Gang Foremen, Assistant Foremen and Foremen.

2. To shorten the hours of labor to forty-four (44) hour per week, five days of eight hours and four hours Saturday.

3. Rate of pay for overtime, Sundays and Holidays included.

4. Method of handling grievances.

5. Provisions to be made for old employes.

6. Abolition of relay or lap system.

7. Abolition of age limit.

8. Regulation of apprentices.

9. That no physical examination be required of applicants for employment.

10. Applicants for employment will only be required to give name and address of relatives.

11. That we go on record as forever favoring the day work system.

12. That we go on record as pledging ourselves to perpetuate the National Agreement as we believe this will mean a more permanent and stable condition acceptable to employes and employer and general public alike. The operation of railways coming more and more under supervision of the Government; the standardization of freight and passenger rates makes for the standardization of pay for employes on all roads, hence the necessity of a National Agreement.

To these twelve questions we pledge our earnest cooperation.

ORDER OF BUSINESS

1. Call to order.
2. Presenting Credentials.
3. Report of Committee on Credentials.
4. Reading of Minutes.
5. Appointment of Committees.
6. Report of Officers.
7. Report of Committees.
8. Unfinished business.
9. New Business.
10. Welfare of the System.
11. Report of Secretary-Treasurer.
12. Election and Installation of Officers.
13. Adjournment.

BY-LAWS.

ARTICLE I.

Section 1. This organization shall be known as "Pennsylvania Railroad System and Allied Lines Federation No. 90."

Sec. 2. Each craft shall have equal voting power in the System Federation Convention as follows: Each delegate will be entitled to one vote, the majority vote of the craft delegates voting will be the unit vote of each respective craft affiliated.

ARTICLE II.

Section 1. The laws of this body shall in no way usurp or conflict with the Constitution of the National or International Lodges of their respective organizations or Railway Employes Department.

Sec. 2. Amendments to these By-Laws may be made at special or regular meetings by authorized delegates representing Lodges affiliated with District

Lodges, Joint Protective Boards or System Council, composing the System Federation No. 90 otherwise, amendments to these By-Laws may be proposed by any Local Federation when approved by one other Local Federation and then submitted to the Secretary of the System Federation, who shall immediately submit same to the Advisory Board of the System Federation for approval; if approved the same shall then be submitted to the Lodges affiliated with the System Federation and if receiving a majority vote of the members voting it shall become a law subject to the approval of the Railway Employes Department.

Sec. 3. As long as any two (2) crafts of the affiliated organizations continue in this System Federation, same shall be continued.

Sec. 4. Any organization becoming three (3) months in arrears in payment of its per capita tax to the System Federation or failing to pay any legal assessments within ninety (90) days from date of issuance shall be subject to fine or suspension in accordance with the laws of the Railway Employes Department.

Sec. 5. Any craft wishing to affiliate with the System Federation may make application at any time, and shall be admitted to membership by a majority vote of the voting strength of this Federation, as per Sec. 1, Art. IV.

Article III.

Section 1. All questions acted upon by the System Federation Advisory Board shall be decided by a majority vote, except upon the question of sending out a call for a strike vote, which shall require a two-third (2/3) vote of the Board. Their decision upon all crafts affiliated shall be binding, subject to approval of the Railway Employes Department.

Sec. 2. Members of the System Federation Advisory Board who do not devote their entire time to the interest of their respective craft and who are not on salary, when out on business of the System shall receive as compensation for their services the sum of nine dollars ($9.00) per day and seven dollars ($7.00) per day will be allowed for expenses.

Sec. 3. In the event of a controversy arising between the affiliated crafts or Lodges which cannot be adjusted by their own efforts, an appeal may be made to the System Federation Advisory Board.

Sec. 4. Any craft having a grievance with the management and failing to secure a satisfactory adjustment of same individually, must submit said grievance to the Local Federation Advisory Board; if approved, same shall become a joint grievance; if disapproved, the same shall be referred to the craft affected with the reasons for disapproval attached thereto.

Sec. 5. A decision of the System Federation Advisory Board shall be final, except that the aggrieved craft shall have the right to appeal to the Executive Council of the Railway Employes Department, whose decision shall be final.

Sec. 6. All disputes or grievances submitted to the System Federation Advisory Board shall be through the Secretary of the System Federation and must be in writing bearing the seal of the craft presenting same.

Sec. 7. No individual craft shall present agreements, or no individual craft action will be taken, without first having the sanction of the System Federation Advisory Board and the Railway Employes Department.

Sec. 8. Any Lodge or a member of the System Federation Advisory Board, or other officer, who does an act or is the instrument through which an act is

perpetrated, injurious to the Federation, or to the interests of Labor in general, may be prosecuted in the following manner:

Charges shall first be preferred by a member of the System Federation, in writing, stating the offense committed, and a copy thereof, under the seal of the accusing craft, shall be forwarded to the accused. Said charges shall be referred to the System Federation Advisory Board, who shall investigate the charges and report without unnecessary delay in the following words: "There seems to be foundation for the charge" if the defendant be a Lodge, the System Federation Advisory Board shall convene in executive session to try the defendant. If found guilty by a two-third vote, the System Federation Advisory Board shall submit the matter, together with the findings and evidence, to the President and Executive Council of the Railway Employes Department, who shall make final disposition of the same, the System Federation Advisory Board to be notified officially of action taken. If the defendant be a member of the System Federation Advisory Board, he shall, on the System Federation Advisory Board reporting "There seems to be foundation for the charge", stand suspended without trial and his case be at once referred to his Lodge for trial. Said Lodge shall at once be furnished with a copy of the charges and the name and addresses of witnesses examined.

ARTICLE IV.

Section 1. The Advisory Board of the System Federation shall consist of three (3) members from each craft affiliated. They are to be elected by their respective craft and shall serve until their successors shall have qualified. Each craft to be entitled to equal voting power on the System Federation Advisory

Board. Any member one (1) year or more in good standing in his craft, and who has worked six (6) months or more in his jurisdiction, shall be eligible to serve on the System Federation Advisory Board or hold office on same.

Sec. 2. Officers of System Federation No. 90 shall consist of President, Four Vice-Presidents and Secretary-Treasurer. Any member of System Federation No. 90 who has been a member for one year in good standing and has worked six months in his jurisdiction shall be eligible to be elected to these elective positions, no two officers to be chosen from any one craft. The Executive Council of System Federation No. 90 shall consist of the President, Secretary-Treasurer of System Federation No. 90 and the General Chairmen of the six affiliated crafts, all of whom must be members of System Federation Advisory Board.

Sec. 3. Should a vacancy occur in the System Federation Advisory Board the local Secretary shall immediately notify the Secretary of the District Lodge, Joint Protective Board or System Council of such vacancy, the District Lodge, Joint Protective Board or System Council shall immediately fill the vacancy, and notify the Secretary of System Federation. All members of the System Federation Advisory Board elected or appointed to fill a vacancy to be approved by the System Federation Advisory Board at a regular meeting subject to the qualifications as stated in Section 1 of this Article. Should a vacancy occur in any of the following officers: President, Vice-Presidents, or Secretary-Treasurer the advisory Board shall have the authority to select a successor to fill out the unexpired term.

Sec. 4. The President, Vice-Presidents and Secretary-Treasurer shall be members of succeeding Con-

vention in case they are not delegates, but without a vote and shall be eligible to re-election.

Sec. 5. The President of System Federation shall receive as compensation a salary of $300 per month payable semi-monthly and seven dollars ($7.00) per day expenses when away from home station.

Sec. 6. The Secretary-Treasurer of the System Federation shall receive as compensation a salary of $275 per month payable semi-monthly.

Sec. 7. The Vice-Presidents shall receive for work performed under orders of the president or Executive Council as compensation a salary of nine dollars ($9.00) per day.

Sec. 8. The above officers when called out on business in the interest of System Federation by the President or Executive Council, will be allowed expenses not to exceed seven dollars ($7.00) per day.

Article V.

Section 1. Upon my honor, I, ... will, to the best of my ability, fulfill the duties devolving upon me as an officer and committeeman of the System Federation and I will at all times act in my assigned capacity to the best interests of this System Federation and the Labor movement in general, and I further promise that I will not defraud this System Federation to the extent of anything. I further promise that when my successor is duly elected and installed, I will turn over to my successor in office all papers, books, money and other property of this System Federation.

Article VI.

Section 1. It shall be the duty of the President to preside at all meetings, to preserve order and en-

force the laws thereof and appoint all committees, decide all questions of order, subject to appeal to the body. He shall keep a correct record of all work performed by him and make an annual report to the members of the Lodges affiliated. He shall carry out all instructions he may receive from the majority of the System Federation Advisory Board. He shall countersign all orders drawn on the treasury by the Secretary.

Sec. 2. The duties of the First Vice-President shall be to assist the President in preserving order and shall preside in his absence. In the absence of the First Vice-President, the second, third and fourth Vice-Presidents shall preside in their respective order.

Sec. 3. The Secretary-Treasurer shall keep a correct record of all meetings of the System Federation Advisory Board and carry on all correspondence. He shall receive all funds from whatever source and shall render a simi-annual report showing receipts and expenditures during the year to all Lodges affiliated. He shall deposit all moneys in some reputable banking institution in the name of the System Federation, such money to be subject to check of the Secretary-Treasurer, counter-signed by the President of the System Federation. The Secretary-Treasurer's books shall be audited by a Committee of one from each craft at the annual meeting and thereafter every three months by the nearest Local Federated Board to the city in which he is located. The Secretary-Treasurer shall give bond in the sum of not less than Ten Thousand Dollars ($10,000), said bond to be approved and retained by the President of the System Federation, the System Federation to pay for the bond.

Sec. 4. The Secretary-Treasurer of the System Federation shall procure seals for the Local Federation Boards, the cost of same to be paid for by the Local

Federation Board, said seal to be used on all official communications of the Local Federation Boards.

Sec. 5. The President and Secretary-Treasurer shall engage suitable offices in a city to be designated by the delegates in convention assembled which shall be designated as permanent headquarters and they shall be empowered to employ clerks, stenographers, etc., to conduct the business of the System Federation.

All books and financial accounts shall at all times be open to the inspection of the President and Executive Council. All permanent salaried officers of this System Federation shall devote all their time to its interests.

ARTICLE VII.

Sec. 1. An affiliated craft going on strike without the sanction of the System Federation Advisory Board, will forfeit the support of the System Federation.

Sec. 2. The System Federation Advisory Board shall have the power to call a strike of all affiliated crafts after all means have been used to settle the matter in dispute and after securing affirmative vote of the membership and sanction of their respective National and International Lodges and the Railway Employes Department.

ARTICLE VIII.

Section 1. The revenue of this System Federation shall be provided for by a per capita tax of five cents on each member of each craft, per month, payable in advance, the same to be collected through the Secretaries of the Districts and Joint Protective Boards of each craft. Where there are no Districts the Local Secretaries shall pay the per capita tax on the number

of members they represent at these points. The per capita tax shall become effective as of August 1, 1919.

Sec. 2. The System Federation shall not be permitted to levy an assessment on its affiliated membership except by a referendum vote, said referendum vote to be taken by and in accordance with the laws of their respective organizations. The tabulated vote of each organization shall be forwarded to the Secretary-Treasurer of the System Federation who shall count, tabulate and notify the membership of the result of the total vote cast. No assessments shall be levied or be considered legal unless a majority of the total vote cast is in favor of said assessment.

Sec. 3. The seal shall only be used on matters pertaining to official business of the Federation and all official communications or documents to be regularly attested shall bear its impression. Any officer or members using the seal for any other purpose without permission from the System or Local Federation shall be fined, suspended or expelled at the option of the System or Local Federation.

Article IX.

Section 1. The System Federation shall meet in Convention on the second Tuesday in the month of October annually for the purpose of electing officers and transacting all business that may be legally brought before the Convention. Special Conventions shall be called by the President should a majority of the District Lodges, Joint Protective Boards and System Council so request.

Sec. 2. A Delegate to the System Convention to be qualified must be a member in good standing of the Local he or she represents, and be employed at least six months previous to the Convention by the Pennsyl-

vania Railroad system or allied lines. Each local Lodge is entitled to one delegate.

Sec. 3. The city in which the annual convention of the System Federation will be held to be decided by the Convention assembled before adjournment.

Sec. 4. All District Lodges, System Councils and Joint Protective Board meetings shall be held in the same city previous to the convening of the System Federation for the purpose of transacting their respective business and formulate their special rules.

Sec. 5. (a) No District Lodge, Joint Protective Board, System Council, Local Federation, Local Lodge, Officer or member thereof shall be permitted to circularize the membership of affiliated organizations on any subject that has for its object the violation of the laws of the affiliated National, International or Brotherhood organizations or the Railway Employes Department.

(b) Any District Lodge, Joint Protective Board, System Council, Local Federation, Local Lodge, Officer, or member thereof, found guilty of being responsible for or advocating the issuance of such circulars or information, shall be subject to a fine or suspension from membership in their respective organizations.

(c) No District Lodge, Joint Protective Board, System Council, Local Federation, Local Lodge, Officer, or member thereof, shall be permitted to donate, transmit or cause to be transmitted any of the funds collected in the name of, or under the laws of the Railway Employes Department or its affiliated National, International or Brotherhood Organizations, to any dual organization or proposed organization that claims or proposes to claim jurisdiction over the same classes of workers that are eligible to membership in the National, International or Brotherhood organiza-

tions affiliated with the Railway Employes Department.

(d) Any District Lodge, Joint Protective Board or System Council, Local Federation, Local Lodge, Officer or member thereof found guilty of violating this section shall be subject to fine or suspension from membership in their respective organizations.

ARTICLE X.

Section 1. The expenses of the delegates to System Federation shall be borne by their respective crafts.

ARTICLE XI.

Section 1. Nine delegates shall constitute a quorum, except as provided for in Article II, Sec. 3, when five delegates shall constitute a quorum.

LAWS TO GOVERN LOCAL FEDERATED ADVISORY BOARDS.

Section 1. At points where a sufficient number of members of crafts affiliated with the System Federation are employed, they may form a Local Federated Advisory Board to be composed of an equal number of craftsmen from each craft; provided, there shall not be to exceed three (3) members from each craft, each craft to have equal voting power regardless of the number of delegates.

Sec. 2. This body shall be known as a Local Federation Advisory Board of the System Federation and shall hold meetings at least once a month.

Sec. 3. The Officers of the Local Advisory Board shall be President, Vice-President and Secretary.

Sec. 4. The Secretary of the Local Advisory Board shall be the official correspondent between the Local Federated Advisory Board and the System Federation Officers and shall conduct all correspondence as such.

Sec. 5. The revenue of the Local Federation Ad-

visory Board shall be provided for by a per capita tax on each member of each craft payable monthly in advance. The Local Advisory Board shall not have authority to incur expense chargeable to the System Federation Advisory Board unless authorized by the System Federation Advisory Board.

Sec. 6. Secretaries of Local Advisory Boards shall send to the Secretary of the System Federation Advisory Board a monthly report the first of each month. Forms will be furnished for this purpose.

Sec. 7. No Local Federation or Individual Local, or member thereof, will be permitted to call a meeting at any point on the System without first submitting the reason therefore to the Executive Council of the System Federation, and receiving their approval for such a meeting. This law not to be construed to interfere with any District Lodge or Joint Protective Board or System Council or District Council meeting of any craft.

Sec. 8. Any additional By-Laws which may be desired by any Local Federation Board will be permissible, providing that the same do not conflict with System Federation Laws or the Laws of the Railroad Employes Department, same to be approved by the Executive Council of the System Federation.

Sec. 9. These By-Laws adopted shall supersede all other By-Laws now in force, when approved by the Railway Employes Department.

Laws to Govern Local Federated Advisory Board Grievances.

(a) All grievances shall be handled by the Local Craft Committee and may be carried up to and including the Master Mechanic. Failing to reach a satisfactory adjustment, the Local Craft Committee shall then turn the case with all data and information in

regard to the same over to the Local Federated Advisory Board who, if they deem it necessary, may take the case or cases on appeal up to and including the Master Mechanic.

(b) When the Local Federated Advisory Board is unable to satisfactory adjust the matter when handled as provided above, the Local Federated Advisory Board Officers shall send over its seal in triplicate form, the grievance to the Secretary of the District Lodge, Joint Protective Board, System Council or District Council, who in turn shall immediately acknowledge receipt of the grievance to the Local Federated Advisory Board from which it came. He shall then refer the grievance to the General Chairman to be handled with the proper officials, sending copy of same to the Secretary of the System Federation.

(c) At such points where there is no Local Advisory Board as provided for in Sec. 1, the Craft Committees will be empowered to handle grievances with Foreman, General Foreman and up to and including the Master Mechanic, or Official of equal rank.

(d) All grievances to receive consideration shall be reduced to writing with the signature of the individual or individuals aggrieved and submitted to his or their respective Craft Committee. No grievance shall be handled by an individual or individual committeeman.

W. P. Weller, Boilermaker,
Chairman.
L. F. Clark, Electrician,
J. W. Thompson, Carman,
F. M. Davis, Blacksmith,
C. H. Smith, Machinist,
C. G. Pardoe, Sheet Metal Worker.

Approved, August 10, 1920.

B. M. Jewell,
Pres. Railway Emp. Dept., A. F. of L.

PLAINTIFFS' EXHIBIT No. 3.

Received From Company

MINUTES

OF

MEETING IN ROOM 53, BROAD ST. STATION,

PHILADELPHIA, PA.

May 24th, 1921.

Philadelphia, Pa., May 24, 1921.

Minutes of meeting in Room 53, Broad Street Station, on above date at 4.30 P. M., there being present:

Mr. R. V. Massey, Asst. Gen. Mgr., Eastern Region.

Mr. H. A. Enochs, Supt., Wage Bureau, Western Region.

Mr. L. C. Douglas, Chief Clerk to Asst. Gen. Mgr., Eastern Region.

Mr. M. L. Long, Chief Examiner, Wage Bureau, Western Region.

Mr. C. A. Kern, Examiner, Wage Bureau, Eastern Region.

Mr. E. W. Smith, Asst. Gen. Mgr., Central Region.

Mr. H. K. Brady, Supt., Labor and Wage Bureau Central Region.

Mr. J. C. Perrot, Chief Clerk to Supt., Labor & Wage Bureau, Central Region.

Mr. W. W. Burrell, Supt., Labor and Wage Bureau, N. W. Region.

Mr. L. F. Reder, Statistician, Labor and Wage Bureau, N. W. Region.

Mr. F. B. Dithridge, Asst. to Gen. Mgr., S. W. Region.

Mr. P. F. Smith, Works Manager, Altoona Works.

Mr. H. A. Brennaman, Asst. Works Manager, Altoona Works.

Mr. N. P. Good, President, System Federation #90.

Mr C. T Foster, Gen. Chairman, Machinists, System Federation #90.

Mr. H. C. Baker, Gen. Chairman, Boilermakers, System Federation #90.

Mr. W. F. Hershey, Gen. Chairman, Blacksmiths, System Federation #90.

Mr. A. J. Berger, Gen. Chairman, Carmen, System Federation #90.

Mr. A. C. Myer, Gen. Chairman, Sheet Metal Wkrs., System Federation #90.

Mr. G. W. Woomer, Gen. Chairman, Electricians, System Federation #90.

MR. MASSEY: This meeting this afternoon is for the purpose of developing the method to follow out the provisions laid down by the United States Railroad Labor Board in Decision #119 and the sixteen principles connected therewith. Now I suppose you have probably seen the notice issued by the Pennsylvania Railroad, haven't you?

MR. GOOD: I don't believe I have seen it.

MR. MASSEY: This has been posted on all the boards. Suppose I read it to you. This is dated Broad Street Station, May 20, 1921, and reads:—

"To all Officers and Employes:—

In June, 1919, soon after my return from France, I made the statement before a meeting of our employes and their families that I believed it was the right of an employe to have a voice in determining the rules and regulations under which he should work.

Since that time, I have been consistently opposing the 'National Agreements', because I have believed the effect of these 'Agreements' was to take that right away from you, and to take away from our officers the privilege of dealing with our own men.

By Decision No. 119 of the United States Rail-

road Labor Board, these 'National Agreements' have been abrogated as of July 1, 1921. In the meantime a substitute must be negotiated, which will be mutually satisfactory to the management and to the employes.

Certain principles have been laid down in Decision No. 119 for our mutual guidance. I quote those which have a direct bearing on what I have to propose to you:

1

'An obligation rests upon management, upon each organization of employes, and upon each employe to render honest, efficient and economical service to the carrier serving the public.'

2

'The spirit of co-operation between management and employes being essential to efficient operation, both parties will so conduct themselves as to promote this spirit.'

Also in a recent message to Congress, President Harding stated the principle that:

'Labor must join management in understanding that the public which pays is the public to be served.'

Principle No. 7 of Decision No. 119 reads as follows:

7

'The right of employes to be consulted prior to a decision of management adversely affecting their wages or working conditions shall be agreed to by management. This right of participation shall be deemed adequately complied with, if and

when the representatives of a majority of the employes of each of the several classes directly affected shall have conferred with the management.' Principle No. 15 reads:

15

'The majority of any craft or class of employes shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employes in such craft or class. No such agreement shall infringe, however, upon the right of employes not members of the organization representing the majority to present grievances either in person or by representatives of their own choice.''

I also quote from the preamble of Decision No. 119, as follows:

''To secure the performance of the obligation to confer on this dispute, imposed by law on officers and employes of carriers, to bring about the recognition in rules of difference between carriers where substantial, to preserve a degree of uniformity in rules regulating subject matters of a general nature, to prevent to some extent the operation in negotiations of a possible disparity of power as between the carriers and their employes, and to enable the representatives of employes of each carrier and the officers of that carrier to participate in the formulation of rules under which they must live, the Labor Board has determined upon the following action.' (The Board then recites its decision.)

There is an apparent discrepancy between Principle No. 7 and Principle No. 15, but the intent of the decision, as stated in the preamble, is 'to enable the representatives of employes of each carrier and the officers of that carrier to participate in the formulation of rules under which they must live.'

I quote the above because I want our employes and our officers to realize that we have a mutual obligation to the public, which obligation can only be fully met by close co-operation.

The aim of the Pennsylvania Railroad during the past year has been to re-establish with its own men a happy and harmonious relationship. This decision of the U. S. Railroad Labor Board now makes this possible.

The railroads are asked to confer with representatives of the different classes of employes, with the view to establishing proper rules and regulations. This is precisely what the Management of the Pennsylvania Railroad has desired.

The employes have the right to select their representatives from among their own number.

Detailed conditions designed solely to secure an accurate expression of the desire of the employes, under which representatives will be chosen, will be announced later.

The men thus selected will be recognized by the Management as empowered to speak for the men by whom they are chosen.

The representatives chosen by the employes may or may not be union men, as the employes themselves decide.

As soon as the representatives are elected, the officers will seek a conference with them, in order to negotiate rules and regulations.

The representatives so chosen will be protected in their position no matter what may be their attitude with reference to the provisions of such rules and regulations.

They will be provided with the necessary transportation, and the Company will reimburse them for time lost, and for reasonable expenses while on this service.

The above applies to a union man, as well as to a non-union man.

. . .

While the immediate emergency to be covered is the preparation of mutually satisfactory rules and regulations, it is the hope of the Management that the men thus chosen as representatives may serve as the nucleus of committees which shall frequently confer with the officers on all matters, not only affecting your welfare, but also the welfare of the railroad, and of the public that we all serve.

Together, we will develop a plan under which every individual employe may have a voice in the progressive efforts of the railroad itself.

This plan, of course, will not be put into effect for men in engine and train service. All controversial questions affecting these men are now settled by the Joint Reviewing Committee, and it is earnestly desired to establish a similar method for settling controversial questions affecting employes in all other branches of the service.

There are three 'Musts' that we will have to work out in co-operation:

1. The public *must* have efficient and economical service.

2. The officers and the employes *must* be paid good wages, in return for good service rendered.

3. We *must* earn a reasonable return on the capital invested in the property.

Through the representatives of the employes to be selected in the manner mentioned we shall be able to get closer together; we shall be able to look one another in the face, and mutually to understand the facts affecting our common interest. The highest interests of the Pennsylvania Railroad can only be realized in the welfare of its employes.

I earnestly ask, therefore, the hearty co-operation of every employe, to the end that we may successfully work together. Doing that, the Pennsylvania Railroad will continue to be one of the greatest railroads in the world. We will add to the happiness and material welfare of every employe, and we will take a real step along the road to the restoration of general prosperity."

Now you gentlemen said you hadn't seen that before.

MR. GOOD: No, I haven't.

MR. MASSEY: What do you think of it?

MR. GOOD: I would like to go over it in a couple of places a little bit. I would be glad to have a copy of it.

MR. MASSEY: All right, we will get you copies.

MR. GOOD: I fail to understand its general purpose.

MR. MASSEY: The general purpose is to give every employe on the railroad an opportunity to select his representatives to represent them in their dealings with the management.

MR. GOOD: Hasn't that already been done?

MR. MASSEY: Not that I know of.

MR. GOOD: Not that you know of?

MR. MASSEY: No, in what way has it been done, Mr. Good?

MR. GOOD: In accordance with the laws of the respective organizations now existing among the several shop crafts on the Pennsylvania System.

MR. MASSEY: I know, but it calls upon the decision of the employes. It speaks about the employes and the representatives of employes. Now how do we know who are the representatives of the employes unless each individual employe has had an opportunity to express his choice by a vote.

MR. GOOD: Item No. 2 of the Board's decision, page 5. The Labor Board calls upon the officers and System organizations of employes of each carrier, parties hereto, to designate their own representatives.

MR. MASSEY: Yes.

MR. GOOD: It calls upon the organizations, the system organizations to do that. The system organizations have done that and this committee appears before you as the designated committee.

MR. MASSEY: The Labor Board also says, Mr. Good, in principle No. 7:

> "The right of employes to be consulted prior to a decision of management adversely affecting their wages or working conditions shall be agreed to by management."

Also in their preamble, they say:—

> "and to enable the representatives of employes of each carrier and the officers of that carrier to participate in the formulation of rules under which they must live."

MR. GOOD: Yes, that is right.

MR. MASSEY: What does that mean?

MR. GOOD: I understand it to mean that it will enable the representatives of the employes, and by that I mean the ones that they may choose to represent them, to deal with the management.

MR. MASSEY: That is what we are suggesting, that each individual employe have an opportunity to express his choice as to who his representatives shall be.

MR. GOOD: To express their choice? What do you mean by requesting employes to express their choice, Mr. Massey?

MR. MASSEY: Because it says here that the representatives of the employes of each carrier and the officers of that carrier shall participate in the formulation of rules under which they must live.

MR. GOOD: Does it not also say in what I have just read that the system organizations shall designate?

MR. MASSEY: Yes.

MR. GOOD: Not the employe, but the system organizations shall designate; undoubtedly implying that that organization with the laws under which it is governed, shall designate those representatives. It doesn't imply anything other than that.

MR. MASSEY: Read the paragraph on the top of the page on the righthand column of the notice.

MR. GOOD: You have reference to the paragraph reading:—

> "There is an apparent discrepancy between Principle No. 7 and Principle No. 15, but the intent of the decision, as stated in the preamble, is 'to enable the representatives of employes of each carrier and the officers of that carrier to participate in the formulation of rules under which they must live.'"

MR. MASSEY: Yes.

MR. GOOD: You have simply quoted from the part of the last paragraph of their preamble, as I understand it.

MR. MASSEY: Yes.

MR. GOOD: In the part of the paragraph that you have enclosed in quotations?

MR. MASSEY: Is there anything unfair in giving employes the opportunity to select by vote their representatives?

MR. GOOD: There is absolutely nothing unfair in giving the employes the right to designate who shall represent them, but I am assuming that the management of the Pennsylvania Railroad Company does not presume to tell those men the plan under which they shall operate in such designation.

MR. MASSEY: No, I don't quite get what you mean about the plan.

MR. GOOD: I have reference to the vote that you have here indicated that you propose to submit. The employes do not intend to indicate to you who shall represent the Pennsylvania Railroad in these negotiations nor how you shall go about determining who shall represent the Pennsylvania Railroad. The decision provides that designated representatives of the company shall meet with designated representatives of the employes.

MR. MASSEY: Yes.

MR. GOOD: The system organizations. Now the organizations are leaving you entirely free and I believe it is a matter for your entire jurisdiction as to who shall represent the company. The decision calls upon the system organizations to designate representatives to meet with you then. That, I believe, is a matter for the system organizations to handle exclusively

in their own way and is a matter in which you should not intrude, to be very frank in my statement.

MR. MASSEY: Well, how would we know that the employes had selected a particular organization, as you say, to represent them.

MR. GOOD: There are various evidences of that with which you are all quite familiar. This committee, which is representative of a large majority—I said in the April meeting in Pittsburgh that it represented more than 75 percent of the total shop craft employes and that assertion was not challenged and, so far as we are concerned, it stands true today. We have done business with you since 1918 in behalf of the employes. We have signed joint submissions. We have negotiated to conclusions and I believe in every way have been recognized as a committee representative of a majority of the shop craft employes on the Pennsylvania System. Otherwise I have no idea that you would have done business with us. In addition to that there have been labor troubles on the Pennsylvania System and there have been stoppages of work. We have been called upon in affairs of that kind to get in touch with these men and get them back to work and have worked in conjunction with your representatives to that end. In all instances have we seen to it that the men returned to work. The State Mediation Labor Board has met with representatives of our organization in the settlement of disputes arising between the management and the employes of the shop crafts of the Pennsylvania System. At no time were we questioned. We spoke for a majority of all of the employes and that was unquestioned in our conference on April 4th and we gave you our answer on April 12th.

MR. MASSEY: I wouldn't say it was quite un-

questioned. I think there were other people there who claimed to represent men in the shop crafts.

MR. GOOD: I am speaking of majorities, Mr. Massey, in accordance with Principle No. 15.

MR. MASSEY: Well, you did state that you represented your 75 percent of the men.

MR. GOOD: We are before you here representing not a hundred per cent. We haven't made such an assertion.

MR. MASSEY: No, you say because you said that in Pittsburgh and it was unchallenged, that substantiated the fact that you did.

MR. GOOD: No, I say that was unchallenged then and we appear before you making the same statement again today.

MR. MASSEY: Then this decision of the Labor Board does not mean what it says.

MR. GOOD: I understand that it does.

MR. MASSEY: Well, doesn't it say a majority of any class or crafts will have the right to say?

MR. GOOD: Yes, it says this in Principle 15:—

> "The majority of any crafts or class of employes shall have the right to determine what organization shall represent members of such craft or class."

MR. MASSEY: Yes.

MR. GOOD: I would like to know what evidence you have or what evidence Mr. Atterbury or Mr. Rae have that would lead them to believe that the officers of System Federation #90 are not representative of a majority of the crafts.

MR. MASSEY: What information we have? I don't know.

MR. GOOD: I said what information you have

that would lead you to believe that they are not representative of a majority.

MR. MASSEY: I don't know that we have any information that would lead us to believe that they do or do not, but the Labor Board clearly sets forth in its decision such principles.

MR. GOOD: Yes, in this way, that they have called upon the System Organizations to designate. The System Organizations have so designated through their proper executive bodies and have instructed us to come before you as representatives of the six shop crafts to comply with Decision No. 119.

MR. MASSEY: How about the American Federation of Railroad Workers? They were also represented in Pittsburgh and they made claims there of the number of men they represented on the Pennsylvania System. Suppose they come in here and say, "We are in here in accordance with the decision of the Labor Board that the system organizations shall get together with the management and negotiate rules and regulations.

MR. BRADY: In this particular instance the Labor Board in its decision, particularly in its preamble, specifically qualifies what they mean by the general expression "System Organization". The System Federation No. 90 is a legacy to the individual property interests from the United States Railroad Administration and at no time has the management of the Pennsylvania Railroad or its antecedent officers of the United States Railroad Administration had anything which clearly indicated to them that the representatives of System Federation No. 90 actually did represent the several classes of employes. On the other hand there are a number of organizations claiming to represent certain classes of employes, and even those

who have been represented by officers previously recognized by the United States Railroad Administration and subsequently by the management of the individual property, due to the peculiar conditions surrounding the transfer of the property back to private ownership. That is why they qualified in the preamble in connection with the use of the words "System Organization." They make it very plain in the preamble that they are talking about the management and its employes coming to an understanding as to the System Organizations to represent them in these particular negotiations.

MR. GOOD: The United States Railroad Administration did recognize System Federation No. 90 as the proper authority to deal with.

MR. BRADY: They say they did and so did we acting as Federal officers for them and what has been done since has been done as a legacy from them, but during their administration and at no subsequent time has anybody been thoroughly convinced by vote or otherwise that you were the proper parties to represent them. Now then even if you do take this vote there is no objection to you gentlemen being those representatives. Don't misunderstand the purpose of it.

MR. GOOD: Is there any reason for you to believe that there is another party representative of a majority of the men on the Pennsylvania System that desires to enter into negotiations with you?

MR. BRADY: I couldn't say about that. I wouldn't want to undertake to say. I believe there are in some classes, perhaps. We know there are other organizations that claim to represent them in these several classes. I know there are other organizations that even claim they represent a majority in other classes. I don't believe it is within the power of any individual on the outside, any officer of the company, or any one

else, unless they actually take a vote, to determine who does represent a majority. That is, I mean now, a majority of all of the employes. I understand how the officers of organizations are selected. It is not always a majority of the employes. It may be a majority of those particular ones who may be present on certain occasions and all that sort of thing with respect to an organization.

MR. GOOD: Suppose we read Principle 7 again.

> "The right of employes to be consulted prior to a decision of management adversely affecting their wages or working conditions shall be agreed to by management. This right of participation shall be deemed adequately complied with, if and when the representatives of a majority of the employes of each of the several classes directly affected shall have conferred with the management."

I don't understand that this subject under discussion now is a matter that has evidenced now that it is liable to adversely affect the wages or working conditions of any employe.

MR. BRADY: It says it may or may not.

MR. GOOD: No, it says the right of employes to be consulted prior to a decision of the management adversely affecting. It is a positive statement.

MR. MASSEY: It says the majority shall have the right to determine.

MR. GOOD: No, I am calling attention to the particular reason for this Principle 7 in my opinion.

MR. MASSEY: Well, Mr. Good, couldn't you carry it out to this conclusion, that the United States Railroad Labor Board having abrogated the National Agreement, that it is then up to a majority of the

classes or crafts to work out with the management rules and regulations affecting the conditions under which they should work, and that that might be an adverse effect compared to what they now had under the National Agreement?

MR. GOOD: I don't understand that Principle 7 has to do with that subject at all.

MR. BRADY: Well, presumptively so. All you gentlemen and all the employes on the several railroads of this country are thoroughly conversant with the subjects in dispute which have been in course of hearing before the United States Railroad Labor Board at this time with respect to the working agreements and, therefore, presumptively they all know what is going to happen. I think that would dispose of that question.

MR. MASSEY: How would you determine under that Principle No. 7? How would you understand the meaning of Principle No. 7 where it says, "This right of participation shall be deemed adequately complied with if and when the representatives of a majority of the employes of each of the several classes directly affected shall have conferred with the management".

MR. GOOD: I understand that Principle 7 has to do with the situation where a grievance—in other words a grievance has arisen and the decision of the management adversely affecting wages or working conditions of the employes. As it stands now that condition does not prevail and undoubtedly Principle 15 and Item 2 of the body of the decision does.

MR. MASSEY: Well, how could you tell under Principle No. 7 without knowing who were the representatives of a majority of employes unless you took a vote to determine who the employes wanted to act as their representatives?

MR. GOOD: Principle No. 15 says this, and I want to call this particularly to Mr. Brady's attention:—

"The majority of any craft or class."

It doesn't say the majority of the employes.

MR. BRADY: Well, that is all right. That don't mean organization to me.

MR. GOOD: No, but the majority of the craft.

MR. BRADY: Of the craft.

MR. GOOD: An organization may represent a majority of the craft.

MR. BRADY: That is all right.

MR. GOOD: And that craft then, by virtue of its own law, under Principle No. 15 is authorized.

MR. BRADY: Understand he is talking about craft, he is not talking about a labor organization. He is talking about the employes who are working in that craft.

MR. GOOD: But they say that a majority of the craft or class shall have the right to determine what organization shall represent the members of that craft. Now it doesn't even imply there that it must necessarily be a unanimous vote of the majority, but it does mean that a majority of the craft shall have the right.

MR. BRADY: I agree with you on that. It doesn't mean a unanimous vote at all and neither does the craft mean an organization. Now I belong to a craft and I don't belong to an organization.

MR. GOOD: I would like to ask this question. You have in this published article here specified that this policy will not apply to the train service employes in these words:—

"Plan, of course, will not be put into effect for men in engine and train service."

May I ask why? May I ask whether you took a vote of the engine and train service employes to determine who their representatives shall be at any time in their history?

MR. MASSEY: No, because they have been dealing with us and we have been dealing with the train service employes since 1898. The other organizations are legacies of the United States Railroad Administration. The United States Railroad Labor Board by its Decision No. 119 abrogated rules and regulations set up under the United States Railroad Administration. We had rules and regulations with the engine and train service employes long prior to the United States Railroad Administration.

MR. GOOD: I don't understand how their abrogation of any rule in existence or any rule rather that was put into effect during the government operation of the railroads would have to do with the rights of representation as outlined in that decision.

MR. BRADY: It has a whole lot to do with it, because some organizations had the same representatives that were recognized prior to Federal control and were handed back to us after the railroad administration ceased. Prior to the railroad administration we had X and during the railroad administration they added plus Y and the Railroad Labor Board can only take minus Y away and we still got X.

MR. GOOD: Isn't it also a fact that the shop crafts represented here today were also in existence prior to Federal control?

MR. MASSEY: Not on the Pennsylvania Railroad.

MR. GOOD: But they were in existence.

MR. BRADY: What I refer to by X prior to the administration, in the four train organizations, the

same people were handed back to us and we have retained X. Now prior to the railroad administration we had X and they added Y and they can only take away minus Y. They cannot take X.

MR. GOOD: I don't understand where that has anything to do with this subject.

MR. MASSEY: Did the Labor Board intend that the employes should have a right to say who should represent them in their dealings with the carrier, with each individual carrier?

MR. GOOD: I understand it did, and I understand it gave them the right to do that in their own way.

MR. MASSEY: If you are assuming that to be correct, why should not the American Federation of Railroad Workers come into us and say we represent 75 percent of the employes in the shop craft and we are here in accordance with the decision of the Labor Board to negotiate rules and regulations covering employes of the Pennsylvania System in the Shop Crafts.

MR. GOOD: I am going to ask you this question, Mr. Massey. Personally do you doubt whether the six crafts here represent a majority of the men on the Pennsylvania System or not?

MR. MASSEY: I don't know whether you do or not.

MR. GOOD: In your own opinion.

MR. MASSEY: I don't know whether you do or not. I don't know anything about the other three regions.

MR. GOOD: Confining it to the Eastern Region.

MR. MASSEY: I don't know whether they do or do not. If I was put on the stand to swear I would say I don't know, but that is a little beside the question. You are coming in and announcing to us that you rep-

resent 75 percent of the shop crafts on the Pennsylvania System.

MR. GOOD: More than 75 percent.

MR. MASSEY: Now what is to prevent the American Federation of Railroad Workers or the XYZ Organization or any other organization coming in and boldly saying we represent 75 percent of the employes of the Pennsylvania System?

MR. GOOD: Mr. Massey, I like to recognize every reasonable proposition, but I am going to take the position that such an assertion is unreasonable in view of the facts that existed on this system in the last two years and you know they are unreasonable as well as I do. You know that the various votes that you have been made acquainted with, you know that the labor troubles that have existed, the general sentiment that has existed, the activities to establish dual organizations on the Pennsylvania System and all these things, the failure that that has met with, is in itself conclusive evidence to the mind of any man who desires to approach the matter from an open viewpoint, that there is only one body representing a majority of the machinists on the Pennsylvania System and that is the International Association of Machinists, and the same applies to the five affiliated organizations. Now let us not assume that the man who has a few members in an organization at a few outlying points is going to lay any claim to representation of 75 percent. Let us not assume that another organization representing a few of the shop crafts and representing only a few of the supervisory forces or clerks and so forth, is going to assume each represents 75 percent of the total number of shop craft employes on the Pennsylvania System or any one craft.

MR. MASSEY: But there were representatives

in Pittsburgh who claimed to represent employes in the shop craft.

MR. GOOD: 23,000 on the entire system one of the bodies claimed they represented and refused to designate and said it was not possible, and that total number of 23,000 was very little more than represented by our organization in one craft.

MR. MASSEY: How about the Association of Railroad Workers that represented 12,000 or 14,000, as I recall?

MR. GOOD: I believe you would go along with us in saying to them, "Where do you have them?"

MR. MASSEY: That is just it. You want us to ask the other fellow.

MR. GOOD: No, I don't want you to ask the other fellow.

MR. MASSEY: We are asking you to show us and you ask us to go and ask the other fellow to show us where he gets them.

MR. GOOD: No, I don't.

MR. MASSEY: I thought that is what you said.

MR. GOOD: I am saying this to you, that you know we have membership from St. Louis, to New York and from Chicago clear down into the most Southeastern point and every point, and you know that our membership is a controlling membership without a doubt. You have dealt with us but we asked at the April 4th meeting for you to show us a decision rendered that was rendered on a question submitted by any other organization and make that decision a matter of record, and we have not been advised that there has been any decision made a matter of record in connection with that meeting.

MR. MASSEY: That may all be true, but you

came into existence on the Pennsylvania System during the period of Federal Control.

MR. GOOD: Certainly.

MR. MASSEY: We were employes of the government just as you were employes of the government. We were not employed by the corporation. We were employed by the government. Now we had to take our orders from the government, and we took our orders from the government. We dealt with you gentlemen as representing the shop crafts and we continued to deal with you because Decision No. 2 of the Railroad Labor Board continued these agreements in effect until they had time to get into them further. Now then, with Decision No. 119 they say that they have disposed of the wage question in Decision No. 2 and Decision No. 119 they dispose of the working conditions, and in disposing of the working conditions in their preamble and principles, some of the principles they set forth, about the right of employes to be consulted prior to decisions adversely affecting their wages or working conditions and that this right of participation shall be deemed adequately complied with if and when the representatives of a majority of the employes of each of the several classes directly affected shall have conferred with the management.

MR. GOOD: Why did you deal with us? Why not others?

MR. MASSEY: Why I just explained that to you, Mr. Good, that during the period of Federal control you were recognized by the government, by the Railroad Administration.

MR. GOOD: No, we didn't deal with the government.

MR. MASSEY: Well, by the Railroad Administration, which was a branch of the government.

MR. GOOD: We didn't deal with the United States Railroad Administration.

MR. MASSEY: Who did?

MR. GOOD: Not this body didn't.

MR. MASSEY: I say you gentlemen were admitted as representatives of the shop crafts of the Pennsylvania System by the United States Railroad Administration.

MR. GOOD: By what process did you determine that we were representative of this organization of the Pennsylvania System?

MR. MASSEY: We didn't determine it by any process.

MR. GOOD: It didn't make any difference.

MR. MASSEY: No.

MR. GOOD: Anybody could have come into you and said he represented so many thousand men and you would have dealt with him at that time because we were under Federal control, you would have dealt with him merely on the strength of his assertion.

MR. MASSEY: Well, I think you know the Railroad Administration had its finger in it, didn't you?

MR. GOOD: Not in telling you who you should meet with. It told you what organizations, but it didn't tell you you should meet with representatives of a majority.

MR. MASSEY: Not of the majority.

MR. GOOD: Well, representatives of the employees. The individual could take it up to you, but you did business with committees representing the men.

MR. MASSEY: Didn't they say what organizations should represent them?

MR. GOOD: Not prior to the agreement. We done business with you under Supplement No. 4.

MR. MASSEY: Yes.

MR. GOOD: You accepted us as representatives of the men under Supplement No. 4.

MR. MASSEY: We were working for the United States Railroad Administration.

MR. GOOD: Well, why not somebody else rather than us?

MR. MASSEY: When? Do you mean now?

MR. GOOD: No, then.

MR. MASSEY: Nobody challenged you.

MR. GOOD: Well, has anybody challenged our rights now that in your opinion represents a majority of the men?

MR. MASSEY: Yes, here in Pittsburgh we had representatives there who claimed to represent, and since that time this decision of the Labor Board has come out. We are not picking you out. We have one ballot out now being voted. We have another ballot going out tonight to be voted.

MR. GOOD: We are not interested in the other fellow's ballot. We are interested in our own.

MR. MASSEY: I am just showing you. You say why do we challenge you.

MR. GOOD: Yes, as representatives of the shop crafts.

MR. MASSEY: These ballots that have gone out to these classes of employees were exactly in the same boat you are in. We dealt with the General Chairmen and the General Committees representating the men in both classes. They did not object to having the ballot taken. They said if we haven't got the membership, if we are not selected to represent the men, somebody else will have to represent them.

MR. GOOD: In other words you propose then to

tell the employes the plan that they shall put into effect to name the committee.

MR. MASSEY: We are going to tell them that they are going to have a right to select their own choice, who they want to represent them in their dealings with the management.

MR. GOOD: But you are going to take the position that notwithstanding the fact that you dealt with representatives of certain bodies for two years and a half, that right has been unchallenged in that time as representatives of a majority, you are going to take the position that the parties have been dealt with as representatives of a majority are now going to be placed in a position where they must produce, because a minority has questioned their right to negotiate.

MR. MASSEY: Well, we are taking this position under Decision No. 119 of the Labor Board.

MR. GOOD: Well, isn't that the position you are taking?

MR. MASSEY: We are taking the position under Decision 119 of the Labor Board.

MR. GOOD: Just as I have outlined it here, is that the position you are taking?

MR. MASSEY: No, not because you are challenged by somebody in Pittsburgh at the meeting on the reduction of wages. This decision was not out when we had the meeting at Pittsburgh.

MR. GOOD: I know that.

MR. MASSEY: I think, Mr. Good, that that is a very logical conclusion, and we might also call your attention to the fact that so far as the Lines West were concerned, and I mean now the entire Lines West, that during Federal control, you were present and I think practically all of the seven gentlemen here were present, plus about ten more, as I recall, about seventeen

of you were present at the conference in the General Manager's office at which I was present when they first approached this subject of representation under Federal Control. You gentlemen came in and you claimed that you represented all these various crafts and the thought paramount in my mind and I think the thought paramount in General Manager McCarthy's mind (both of us at that time were Federal officers) were the mandatory instructions from the United States Railroad Administration that we should see everybody and anybody, and when you came in and you claimed you represented a majority, we didn't care anything about that because we were going to see everybody and we were going to continue to recognize you as representing the men you alleged you represented until such time as it was necessary for somebody else to prove otherwise. Now nobody ever came in and proved otherwise, and nobody ever knew whether you did or did not represent these men and they didn't care. Now comes along the end of Federal Administration and the return of the properties back to the individual owners and the United States Railroad Labor Board having in the meantime been created comes out with a decision and they assume, they didn't order, but they assume the continuation of the rules, working conditions and agreements promulgated by and under the authority of the United States Railroad Administration. Now that is the little narrow string that the whole thing hangs on, the assumption on the part of the Labor Board as a basis for their increase. Now that is all there was to it. Now they come to a point where they are going to perpetuate a situation for the individual owners and they say that the employes shall determine that. That is the distinction.

MR. GOOD: You mean to say that you recognized and did business with our committee?

MR. BRADY: As a Federal officer, yes.

MR. GOOD: As a Federal officer to the extent that you, as well as other General Managers, or other representatives, settled claims involving thousands and thousands of dollars and paid the money out to these men affected by the settlements and accruing to them over our signatures as representatives of these men without knowing that we did actually represent them and that we were properly selected and authorized to do so?

MR. BRADY: Not only that. We did business with other organizations and have done business with them since,—whom we are confident don't represent a majority, at least I don't believe they do. They never showed us they did. You are not the only one and quite a number of other organizations claim they represent them.

MR. GOOD: I believe you were satisfied that we represented the men whose claims we laid before you and were authorized to negotiate to a conclusion in behalf of these men or you never would have settled with us and paid out money to these men on behalf of the United States government.

MR. BRADY: Well, you can understand my position when you claimed you represented somebody and you kicked over the traces and I told you you had to and I made you show individual authority.

MR. GOOD: Yes, I have on file a telephone request from Mr. McCarthy to return to Pittsburgh and assist in putting the men back to work down through the West when that question was up.

MR. MASSEY: That is all admitted, Mr. Good, that you gentlemen were recognized as representatives

of the shop craft employes on the Pennsylvania System. Now the Labor Board comes along and says that the majority of the employes shall say who their representatives shall be.

MR. GOOD: The Labor Board doesn't say that in my opinion. The Labor Board says this, that the majority of any craft or class of employes shall have the right to determine.

MR. MASSEY: Well, I will say craft or class where I said employees. I was using it in the broad term.

MR. GOOD: I want to add this to it. I notice in this letter Mr. Atterbury says this:—

> "The employes have the right to select their representatives from among their own number."

MR. MASSEY: Yes.

MR. GOOD: Why not accord these employes the right to elect them in their own way?

MR. MASSEY: Well, how do they want to elect them?

MR. GOOD: That is a matter for them to determine.

MR. MASSEY: You don't think then that the management should know in any way whether the employe, each individual employe of any craft or class, has had a right to express his choice? You don't think that is any business of the management?

MR. GOOD: The decision doesn't provide that it shall be a unanimous decision.

MR. MASSEY: No, I am talking about a majority, not unanimous. It says a majority, Mr. Good. It doesn't say unanimous.

MR. GOOD: I don't understand that the decision

provides that you shall have anything to do whatever with the choosing of these representatives.

MR. MASSEY: We are not having anything to do with it.

MR. GOOD: You are when you are submitting a ballot and asking the men to decide on that ballot. Who is going to count it?

MR. MASEY: Who is going to count it?

MR. GOOD: Yes.

MR. MASSEY: Why, whoever you want to designate. The employes will designate the representatives to count the ballots.

MR. GOOD: They will?

MR. MASSEY: Yes. We are not going to count the ballots in here if that is what all the talk is about. Maybe I didn't make that clear to start with. After the employe has a ballot placed in his hands he votes and he puts it in a sealed envelope. There is an envelope in which the man gets his ballot, and there is another envelope enclosed and he puts his envelope in that and seals it and he puts that envelope inside of another one with his name on it so it can be checked against the roster or payroll. He places these two in another envelope addressed to the Superintendent and after the Superintendent gets these he tears the outside envelope open and the ballot is in this other envelope sealed; then the Superintendent checks the name, occupation and so forth against the roster to see if it is an employe, and he sends that envelope containing the ballot into the General Manager's office. On the day the ballot is to be counted, the representatives of the employes and representatives of the management will be here and they will tear that envelope open and the envelope with his name and occupation on will be destroyed because it has been checked to see that it was

an employe, and there is the ballot. Now nobody knows how the man voted. It is a secret ballot.

MR. GOOD: What sort of a ballot do you propose to send out?

MR. MASSEY: Why, we had in mind a ballot something on the order of this one (ballot handed Mr. Good) with a statement attached explaining to each individual employe.

MR. GOOD: May I just stop long enough to glance over that?

MR. MASSEY: Yes, sure; go ahead.

MR. GOOD: For the benefit of the committee who cannot all see this paper, I will read it:

"PENNSYLVANIA SYSTEM
CENTRAL REGION

May 25, 1921.

Decision No. 119 of the United States Railroad Labor Board ceases and terminates on July 1, 1921, the rules, working conditions and agreements in force under the authority of the United States Railroad Administration.

The Labor Board directs that the management and employes designate and authorize representatives to confer and decide rules and working conditions, such conferences to begin at the earliest possible date. Undue delay on the part of carrier may cause extension of rules, working conditions and agreements beyond July 1st. Undue delay on the part of employes may cause termination at an earlier date.

The Labor Board laid down sixteen principles to be kept in mind in negotiations between the management and employes. Principle No. 15 reads as follows:

'The majority of any craft or class of

employes shall have the right to determine what organizations shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employes in such craft or class. No such agreement shall infringe, however, upon the right of employes not members of the organization representing the majority to present grievances either in person or by representatives of their own choice.'

In order to fairly determine the employes' choice of representation, a vote will be taken by letter ballot as set forth below.

This vote is to be taken without reference to or consideration of the membership or non-membership in any organization. Employes are free to vote their choice according to their own interests and without prejudice. Voting will be confined to active employes.

Each employe will vote for 3 Employe Representatives to be constituted as a Division Committee. This Division Committee, if empowered by a majority vote of employes, will elect one of their number as Chairman, and will speak and act for the employes on the Division for which elected. The Chairman so selected will become a member of the General Committee which will, in turn, select a Chairman who is an employe of the Pennsylvania System. The General Committee or such portion thereof as may be decided by the committee will speak and act for the employes before the General Superintendents and General Managers.

Two or more votes in one envelope and two or more votes from any one employe will not be counted.

Enclosed are three envelopes. Ballot, when filled out, should be placed in small envelope marked 'Official Ballot' and envelope sealed. This envelope should then be placed in the envelope having in upper left hand corner blank spaces for name, occupation, location and division of the employe filling out the ballot. These blank spaces must be filled in and this envelope should then be sealed and placed in the large envelope addressed to Superintendent, and mailed by Railroad Service or United States Mail.

Count of the ballots will begin Thursday, June 9, 1921, at 9 A. M., Eastern time, Room 720, Pennsylvania Sta., Pittsburgh, Pa., in the presence of representatives of the management and such representatives of the employes as desire to be present.

BALLOT.

I hereby cast my vote for the employes shown below, to act as my representatives on..... Division, in connection with negotiations concerning disposition of the matter covered in Decision No. 119, United States Railroad Labor Board.

CHOICE OF REPRESENTATIVE COMMITTEE

VOTE FOR THREE

Name of Committeeman Voted for.

.....

Occupation .....

Location .....

Division .....

Name of Committeeman Voted for.....

Occupation .....

Location .....
Division .....
Name of Committeeman Voted for.....
Occupation .....
Location .....
Division .....

xGive in each case the Name, Occupation, Location and Division of the person for whom you are voting to represent you.

Thursday, June 2, 1921, is fixed for the day of the election, and ballots, must be forwarded not later than that date by train service or by United States Mail to the Superintendent, who will check against the payrolls to see that all those voted are employes. Ballots with the poll list or roster will then be promptly forwarded by registered mail to the General Manager, who will arrange for the count to begin on Thursday, June 9, 1921, at 9 A. M., Eastern Time, Room 720, Penna. Sta., Pittsburgh, Pa."

MR. MASSEY: That would not apply, that form would not apply to the shop crafts because you got machinists, boilermakers, blacksmiths and so forth, and it was our thought that there would be a representative from each craft from each seniority point to be selected.

MR. GOOD: In other words, taking the position as I said a little bit ago, that I believed you were proposing to dictate to the employes how they should be represented in their negotiations.

MR. MASSEY: That is what we are talking about now and we are here to get your views. Now that letter ballot at Altoona, it would be the purpose there where everything is segregated, to let them drop

the ballot in the ballot box provided for that purpose and the count of the ballot would be made by the representatives of the employes and the representatives of the management. On account of the men spread out over the railroad, we thought it would be necessary to have a letter ballot, whereas in a confined area like the Altoona Works, it could be taken in the regular method of election by depositing the ballots in the ballot box, and the count made by representatives of the employes and the management acting as tellers.

MR. GOOD: Well, in the body of your letter you state this:—

> "The chairmen so elected will become a member of the General Committee which will in turn select a chairman who is an employe of the Pennsylvania System."

MR. MASSEY: Yes.

MR. GOOD: How does that line up with Principle 5 which reads that the right of such employe organizations to give every such employe officials and representatives of his own choice whether employes of the particular carrier or otherwise shall be agreed to by the management.

MR. MASSEY: Do you want to have some outsider to represent you?

MR. GOOD: The employe has a right to have them if he chooses to have them, as I understand it.

MR. MASSEY: Do you think any of the employes wants to have in an outsider to represent them?

MR. GOOD: As you said a bit ago, I don't know.

MR. MASSEY: Well, I don't believe you do. The employes want the employes to represent them.

MR. GOOD: I understand that they want men who are, in their opinion, properly representative of

them and who are representing them in a capable manner. I believe that the principle provides that they shall be absolutely foot free in that choice.

MR. MASSEY: I would be very much surprised if there were not enough men to select as their representatives who were fully as capable of representing them as anybody on the outside.

MR. GOOD: Your surprise or my surprise doesn't enter into it. It is a matter of the Principle of the provision of the Board. Undoubtedly that stipulation in there is in violation of Principle 5.

MR. MASSEY: Is that your only objection to it?

MR. GOOD: No, that is not my only objection but that is one of them.

MR. MASSEY: Well, is there anything unfair about that?

MR. GOOD: About this?

MR. MASSEY: Yes.

MR. GOOD: Yes.

MR. MASSEY: In what way?

MR. GOOD: It is a violation of Principle 15.

MR. MASSEY: What does the preamble say? What does Principle 7 say?

MR. GOOD: Principle 7 does not have to do with agreements inasmuch as it is a matter for the settlement of disputes.

MR. MASSEY: Your idea is then that you gentlemen should negotiate rules and regulations under which the employes should work and then when any dispute arises, an election should be had to see that a majority of the employes wanted you to represent them; is that it?

MR. GOOD: My thought is this, briefly, Mr. Massey, that there is no sound evidence that we are not representative of the majority of all crafts, that each

chairman here is not representative of a majority of the craft which he represents, and that I am not representative of a majority of all of these crafts.

MR. MASSEY: There is no evidence one way or the other.

MR. GOOD: There is no evidence to the contrary.

MR. MASSEY: There is no evidence one way or the other.

MR. GOOD: Then you set aside all that has transpired in the past two or three years as evidence in that respect. It doesn't matter how you have felt but it is the fact of evidence.

MR. MASSEY: Well, you say there is no evidence to show that you don't represent these men. We say that there is no evidence to show that you do represent them. Now all we are asking for is to have that evidence shown.

MR. GOOD: May I ask if there is any other body of shop craft employes that claims to represent a majority that has made application on you.

MR. MASSEY: We have an application for an agreement and rules and regulations I think from the American Federation of Railroad Workers.

MR. GOOD: Do they claim to represent a majority of the shop craft employes under Principle No. 15?

MR. MASSEY: They are perfectly willing to have a vote taken to show whether they do or do not.

MR. GOOD: I am asking you whether they have made any claim to that extent.

MR. MASSEY: We haven't asked them.

MR. GOOD: Would you be opposed to asking them?

MR. MASSEY: No. We have asked them. We said we wanted to be shown by ballot, and they said it

was perfectly satisfactory to them. That is the way they are going to show whether they represent a majority or not.

MR. GOOD: On this ballot?

MR. MASSEY: Yes.

MR. GOOD: I cannot understand everything in regard to this but I can understand where there might be some plausible reason for minority trying to get a representative in on something like this, and so can you.

MR. MASSEY: Well, isn't it perfectly reasonable to give every employe an opportunity to express his choice?

MR. GOOD: It is perfectly reasonable to comply with Principle 15 of the decision and item No. 2.

MR. MASSEY: Why, here in this statement Mr. Atterbury says, and this is a statement of the railroad—

> "The men thus selected will be recognized by the management as empowered to speak for the men by whom they are chosen.
>
> The representatives chose by the employees may or may not be union men, as the employes themselves decide."

That is a matter for the employes to decide.

MR. GOOD: Well, what do you understand by Item 2 on page 5 of Decision No. 119?

MR. MASSEY: Paragraph 2 of the decision says:

> "The Labor Board calls upon the officers and system organizations of employes—"

MR. GOOD: Well, what is meant by "system organizations of employes."

MR. MASSEY: It means a system organization formulated by this method. It doesn't say the existing system organization or system labor organization, but it says system organization.

MR. GOOD: Oh, I see. In other words you endeavor to establish and form an organization that will meet with your approval.

MR. MASSEY: Not entirely. The Board doesn't say system labor board organizations. It says system organizations.

MR. GOOD: It says system organizations of employes.

MR. MASSEY: Yes.

MR. GOOD: What does it say they shall do?

MR. MASSEY: It says they shall designate and that is what we are saying. We say the employes will designate who shall deal with the management.

MR. GOOD: But you are telling them how to go about it.

MR. MASSEY: No, we are giving them an opportunity to vote for their own choice.

MR. GOOD: Suppose that they don't want to exercise that.

MR. MASSEY: Well, that is their prerogative, I assume.

MR. GOOD: Suppose that you would submit this ballot and a majority of the shop craft employes would refuse to use the ballot?

MR. MASSEY: Then we wouldn't have a majority.

MR. GOOD: Inasmuch as then they would take the position that they had already selected men to represent them.

MR. MASSEY: Then there wouldn't be a majority voting.

MR. GOOD: But there would be a majority not voting. What would you do when a majority had refused to vote?

MR. MASSEY: I suppose that would be a matter for the Labor Board to decide. I suppose in that case we would have certain rules and regulations governing employes of the shop craft and we would notify the Labor Board that we had endeavored to carry out their decision No. 119 and Principles contained therein and that the employes had declined to vote and say who they wanted to represent them and that we would put in effect the rules and regulations that we had worked up.

MR. GOOD: You would understand, of course, when making that statement, that you had submitted that ballot of your own volition and not as a joint ballot.

MR. MASSEY: Yes, sure.

MR. GOOD: And the employes' reasons for refusing to cast the ballot might and very probably would be because they would take the position that they had already designated their representatives and sent them in to confer with you. You have refused to recognize them insisting that they tell you directly whether these men were representatives of them or not.

MR. MASSEY: We are simply giving every opportunity, as we understand Decision No. 119, to every employe to express his own choice without any coercion in any way, to select the man he wants to represent him in his dealings with the management, so that he may have his say in who shall represent him.

MR. GOOD: In your opinion you have complied with the decision then?

MR. MASSEY: Oh, yes.

MR. GOOD: In the event that the employes would

act in accordance with the decision and send a committee in to you with credentials showing that they were representatives of a majority of the employes.

MR. ENOCHS: Mr. Good, don't you recognize that the railroad management have a problem to solve in this connection? We have today on this railroad not only your committee, we have the American Federation of Railroad Workers, we have the Mutual Benefit Associations, we have individuals who have protested to the management against anybody speaking for them. Now what better way can there be devised to determine that question than this. Surely if you possess the power that you think you do possess, what answer can there be but the answer that is in your direction? Now can there be any other answer? You certainly are not afraid of putting this thing up to a test?

MR. GOOD: I certainly am not.

MR. ENOCHS: No, I don't think you are. Now why couldn't your committee go right along with the management and help to put this vote across in a businesslike, straightforward manner, so that we will be and you will be in absolute position to comply with the terms of Decision No. 119? Unless this matter is determined, and you say you are not afraid of it, the management does not know who is authorized, but the management is in the position today of having to meet two or three or perhaps four groups of employes, not only you but some others as well. Now the Labor Board calls upon the officers and system organizations of employes. It doesn't say the existing labor organizations. It doesn't say the Labor Organization and it doesn't say in the supplemental addendum that has been issued to this Decision No. 119 that you are also to include these labor organizations as system organizations. It means that this is a matter that must be determined

in some manner. Now the only possible method that appears to the management, the only reasonable method, is to have a vote by ballot that is going to go out to the individual without any coercion from anybody, without any dictation. You can use all the propaganda you want, you can send out all the circulars you see. You will take part in the counting of this vote and there will be no fraudulent work, there cannot be any fraudulent work in it, and it seems to me you people, if your premises are correct, and I am not saying whether they are or are not, but if your premises are correct, you have everything in the world to gain and not a thing in the world to lose. Now this railroad is not asking you to bear any of this expense. We are not asking you to participate in an unfair thing. We are not asking you to join with us in doing something that is dishonest or unfair. We are asking you to join with us in submitting votes to the shop employes on this system that is going to determine definitely and without any subsequent qualifications or without any subsequent wrangling with somebody else as to who is the group of employes who is going to sit down and negotiate on behalf of all the employes in our shops the code of rules and working conditions that are going to be fastened on the Pennsylvania System, over the whole system, and to continue all the negotiations arising out of that. Now to me that is not only the fair thing to do but from your own standpoint it is the only logical and wise thing for you to do.

MR. GOOD: In your opinion.

MR. ENOCHS: In my opinion, yes, and some day you are going to tell me that I was right.

MR. GOOD: I am willing to take my chances on that. I want to say this, Mr. Enochs, that this committee is here today to satisfy the mind of any doubting

Thomas in regard to how many men it has back of it, whether it is duly representative of a majority of the shop crafts of the Pennsylvania System, and I don't want to be placed in a position before the Labor Board and before the men that I represent, and neither does any other member of this committee desire to be placed in that position of unduly delaying the negotiation of a new working agreement. With the knowledge that we possess we could not go before the United States Railroad Labor Board and say that we had endeavored to the best of our ability to secure an agreement before July 1st, 1921 if we agreed to such a plan as this. Neither would the men that we represent justify us in taking that position, because they know what is back of us, they know whether we are representative of them or not, and we are here directly as their representatives to hasten these negotiations and not to go before the Board with a plan that will unduly delay negotiations, regardless of the fact that we do and know that we do represent a majority of them. We would not be complying with Decision No. 119 were we to agree to such a thing as this, knowing, as we do, that we represent a majority, and knowing as we do that the committee is representative of a majority, and then agree to a stall of thirty days.

MR. ENOCHS: You made a statement a moment ago of how you grew up on this line. You made a statement about being recognized during federal administration. I guess I know about as much how you grew up as anybody sitting in this room, how you grew up on this line. Mr. Foster, I think he knows, Mr. Berger knows and I guess Mr. Woomer knows because they were all there at the first meeting we had with Mr. Jewell in October, 1918; but you were not the only committee that negotiated with the Pennsylvania Man-

agement at that time. We had at different stages various committees. We had at least in one class of employes I think five different committees claiming to represent the employes. Many of these organizations were what you might call McAdoo organizations the same as McAdoo mechanics. They grew up during Federal Administration. Some have since disappeared. Some were here before the roads were taken over by the government. Now what we are aiming to do is to carry this thing forth in a manner that is going to insure tranquility and stability not only to the Pennsylvania management but to the force of men working for the Pennsylvania Railroad, officers and men, officers and employes, and that can best be done by determining in as secret a manner as is possible who are the representatives of the employes of each of the classes, who are authorized and designated to speak and act for that particular craft or class to carry out the purposes set forth in Decision No. 119. And you know there are quite a good many men on this road who are interested in the outcome of this thing, and we are interested in a practical determination of this question. You were before the Labor Board and you saw various groups of employes represented by various agencies. Now it is incumbent on the management to know, as I see it, first that the representatives that they are negotiating with have power, delegated power to speak and act for the employes to be determined by a ballot vote which will place beyond all question, beyond all cavil on the part of a group of employes who are fostering another organization or not fostering any organization that there is a representative group who have been empowered to speak and act for a majority of employes. It might be yourselves. I don't know who it is going to be.

MR. GOOD: Isn't it a fact that this organization of ours has a majority representation and that that has never been questioned.

MR. ENOCHS: I don't know.

MR. GOOD: You know it does.

MR. ENOCHS: We haven't any access to your books and we don't know what you got.

MR. GOOD: That isn't the question that I am raising. Have you ever had the right of ourselves to appear as representing the majority questioned? Has any organization other than this one ever appeared and claimed to represent a majority?

MR. ENOCHS: I don't think as a matter of fact you ever made any claim as to who you represented or did not represent.

MR. GOOD: I am claiming now that we do and I am asking you if there is any other body that ever appeared before you claiming to represent a majority in the same crafts that we represent.

MR. ENOCHS: I don't think in the shop crafts any one has appeared before us claiming to represent a majority any more than you have.

MR. GOOD: At any time.

MR. ENOCHS: I don't recall at any time previous to this, outside of the Pittsburgh meeting, as to whether the question of membership or whether you represented 50 percent or 75 percent or 100 percent or what not of the employes ever came up. I don't think it was ever raised. We accepted you on faith as speaking for our employes and that would continue until such time as you presented to us a code of rules that would involve the rights, privileges and duties of a group of employes. When you do that then your right to speak and act in a representative's capacity would be questioned just the same as we questioned it when

you asked to come down, I think, for the National Agreements. You were asked who you represented I think last May or April. I know that a group of employes who set about to determine the welfare and happiness of a great mass of employes through a code of rules would certainly have to produce evidence of some sort that they were expressing the wishes of the majority of the employes to be affected by such code, because any other position would be absolutely unreasonable and the management, having the welfare of all the employes at heart, would not undertake to set up a code of rules with any set of men or employes that was going to impose obligations or duties on some other employes who were not represented by that organization. Such a thing would be unreasonable. Now what we propose here is a very reasonable thing. It does, as you say, impose some slight delay, but we are not asking you to bear any of the delay. This matter can be handled quickly. All we ask you to do is to go out of here and tell your people to take part in this vote and you can tell them who to vote for if you want to. We are asking you to come in here to act as tellers with this committee on this vote to see how the vote is tallied. Now what could be fairer than that?

MR. GOOD: I cannot reconcile your position with the provisions of the decision.

MR. MASSEY: Well, Mr. Good, as Mr. Enochs has said, we would certainly question your right and would want to be shown in some fair and reasonable way when the National Agreements expired and new rules and regulations were to be negotiated, and we would certainly have the right and we would be derelict in our duty if we would not insist upon the right in having the men who came in here to negotiate those rules and regulations show us that they represented a

majority of the employes for whom they were speaking.

MR. GOOD: Well, if that was your thought why did you designate on your ballot employes rather than organizations? If they indicate a certain organization, what objection have you to that?

MR. ENOCHS: I would like to answer that question. That is a thing that has caused more discussion amongst ourselves than any one feature of it. There are from 58 to 63 organizations who have appeared before the United States Labor Board and these organizations have all represented some of the employes on our lines. Now when we start out to include a list of the organizations we have to include all the organizations and the moment we include all the organizations, then we might not include some that we ought to include; I don't know. If a man wants a representative to represent him, he may vote for N. P. Good. No one will question who N. P. Good is. He is chairman of the General Shop Crafts Federation. Now that was the major reason that any reference to organization was kept out of the ballot.

MR. GOOD: Why couldn't you have left that blank and leave him write in the organization. He knows the organization he wants, he knows the name and he knows how to write it, and if he don't know how to write it he can have it printed on a slip and stick it on.

MR. ENOCHS: There again comes in the question of trying to influence the man voting. That is something which was not desirable to do.

MR. GOOD: It was not desirable, but it is a violation of the principle to follow out such a plan. There are lots of things not desirable, but nevertheless they are necessary.

MR. ENOCHS: That decision says the Labor Board calls upon the officers and system organizations of employes of each carrier. If the Labor Board had only said System Labor Organizations, if they had only said System Labor Organizations whose names appear as Exhibits to this decision, but they didn't. Now that is the problem that we have to solve ourselves and we are asking you to help us solve it.

MR. GOOD: By your election of committees through which you hope to form an organization rather than let the employes form an organization and then say through that organization who represents them.

MR. ENOCHS: We want to establish a committee representation that is going to be beyond all cavil of any employe or any representative of the employe so there can be no chicanery, no fraud, nothing at all that is open to suspicion. It is a plain open book.

MR. GOOD: But you are proposing to tell the men what form of organization they will have to create, by the election of certain men and then finally the designation of a chairman. The decision provides nothing like that. It does provide, however, that the system organizations shall designate who shall meet with you.

MR. MASSEY: Well, they are going to designate, Mr. Good. After these men are elected they get together and select their general chairman and general committee, and they say now these are the men we have selected to deal with the management.

MR. GOOD: Why do you propose to tell them that is the plan they have to follow before they can get before you?

MR. MASSEY: What other plan would you have them follow?

MR. GOOD: Well, I am going to say to you what plan they will follow, I am afraid.

MR. MASSEY: We are here asking you to help us solve this problem.

MR. GOOD: And if we can't go to our membership with a more logical reason than what you are advancing here now for delaying this agreement, I am afraid, very much afraid, of what our membership is liable to do.

MR. MASSEY: Well, what do you think is going to happen?

MR. GOOD: I am afraid they may demonstrate to you how many men we do represent. I am in here telling you the facts, because this is no time for camouflage or unnecessary delay. We have been sent in here by the constituted board, the board elected by the membership as a whole under the laws of our organization, to negotiate an agreement for them and if we go out and tell them that the company refuses to recognize us because they question whether we represent a majority or not, you are liable to get a demonstration that nobody can stop as to who does represent the men. Now I don't want that to come and I am going to say to you, let us look the thing square in the face.

MR. BRADY: If you do that where do you place ourselves?

MR. GOOD: I am realizing just exactly, and this is no time to do that.

MR. BRADY: Well, I hope it isn't.

MR. GOOD: I want you gentlemen to understand that it isn't a threat.

MR. BRADY: Let us get on mother earth. Now you are assuming that there is going to be a delay. Now I want you to bear in mind, and I say this I think without contradiction by the chairman, that you don't

know but what this management is now in a position to hand you an agreement the very moment that question is determined.

MR. GOOD: But suppose that agreement is not acceptable to us?

MR. BRADY: All right. The Board directs that you shall negotiate and that all necessary measures would be taken to do that job as expeditiously as it is possible for anybody to do it.

MR. GOOD: They are not now being taken.

MR. BRADY: There is no delay or no camouflaging or anything of that kind.

MR. GOOD: I am going to say to you that we are here today to arrange the preliminaries to negotiate an agreement. We represent more than a majority. As I said before, we are now representing the majority and we are here today insisting on the right to proceed with that negotiation. Failure to do that naturally will cause us to come before the Board and cite the conditions why it is impossible, and I want to say to you that we will show to the Board without any question of doubt whether we have the right to represent the men or not and we are at any time prepared to go into negotiations with you on this question. I want you to get that clear, that we are prepared to satisfy anybody else, including you, whether we are representing a sufficient number of men to give us that right or not whenever somebody comes up with reasonable figures to present to you that they represent a majority of the men.

MR. BRADY: With all due deference to you that is your declaration.

MR. GOOD: That is a statement of fact.

MR. BRADY: But not a convincing fact. That is a declaration and the responsibility, as we see it, is

placed upon the railroad by the Labor Board to determine. Mr. Enochs told you that there are from 58 to 63 organizations claiming to represent the employes and all that sort of thing. Are you going to make 60 agreements on this railroad?

MR. GOOD: No, sir.

MR. BRADY: Absolutely no.

MR. GOOD: Principle 15 provides for one agreement.

MR. BRADY: The responsibility is with the carrier then to determine who is representing the men, isn't it?

MR. GOOD: Yes, in a sense.

MR. BRADY: And we are asking you to participate in it and even to help count the vote.

MR. GOOD: I am going to make this statement. If you believe that there is any other organization on the Pennsylvania System that represents 51 percent of the employes in the Shop Craft, you proceed to make an agreement with them and we will show you how quick we will go before the Board and break that up. We are prepared to show you whether we represent 51 percent at any time at all the occasion requires it. If you believe that there is anybody else that represents a sufficient number of men for you to do business with them, proceed to do it and we will go to the Board, or else we are ready to do business with you now. We are ready for a showdown on that question any time the occasion requires it. It doesn't require it now.

MR. BRADY: Now do you think that is an intelligent way to deal with this subject?

MR. GOOD: I believe it is, in view of the matter we have to deal with here, after having dealt with you for two and half years, and this is a poor time now for

you to raise the question who we represent and who we don't.

MR. BRADY: There is a different responsibility now.

MR. GOOD: No, no difference. There may be a different responsibility, but your responsibility to the Federal Government was just as great as it is now if you are representing one as faithful as the other.

MR. ENOCHS: No, I don't agree with that, but we are back to ourselves now and what we are talking about is what we are going to do.

MR. GOOD: The same method of procedure was followed in electing us representatives of the men then as now.

MR. MASSEY: We are not questioning the method of how you were elected. We have asked you to come in here to help us solve this problem. As we understand the decision of the Labor Board the intent was that a majority of the craft or class should say who will represent them in their dealings with the carriers. We understand that the employes should have an opportunity to express their choice and a majority of them to say who will represent them in their dealings with the management, and all we are asking you to do is to go out to your men and explain what we are after, which I think you will have to admit is fair and reasonable. We don't care, as Mr. Enochs says, how much propaganda you put out or how much electioneering you do or anything else. The purpose is to put this ballot in the hands of every individual employe and then he exercises his choice in a secret ballot. You are to participate in the counting of the ballot and we are asking you to be a part and parcel of this whole thing. We are not simply taking the position that we are going to send this ballot out and have these men vote this

way or that way or the other. If we did we wouldn't have discussed it with you, but we are asking you to help us solve this problem.

MR. GOOD: Without having given any good sound reason why it is necessary to solve it.

MR. MASSEY: Well, I think we have said repeatedly, reiterated that it was our understanding that a majority of the employes should say who should represent them.

MR. GOOD: But you haven't said you doubted we did.

MR. MASSEY: I said I didn't know whether you did or did not. I said I didn't know whether you did or did not.

MR. GOOD: As long as you put it that way I will qualify my statement.

MR. MASSEY: In which way do you qualify?

MR. GOOD: By the portion that we will prove it to the proper authorities.

MR. MASSEY: Who are the proper authorities?

MR. GOOD: If we cannot negotiate with you the Board will be the proper authority.

MR. MASSEY: Then you don't think the management has any right to question any committee of employes to come in and say we represent a certain class of employes and we are here to negotiate rules and regulations with you.

MR. GOOD: You certainly have if a reasonable doubt exists, as to whether a committee does represent a majority of employes, but you haven't even said that a reasonable doubt does exist.

MR. MASSEY: I told you I didn't know whether you did or whether you didn't.

MR. GOOD: Then why submit a question until there is some evidence that we don't.

MR. MASSEY: Is there any evidence that you do?

MR. GOOD: Yes.

MR. MASSEY: Where?

MR. GOOD: The very fact that we have been elected.

MR. MASSEY: We don't know anything about that.

MR. GOOD: We have notified you over the seal of our different organizations. You have official communications addressed to each general manager, each superintendent and each general superintendent informing you at the time of our election.

MR. BRADY: I really think you are approaching the subject in a wrong attitude, Mr. Good. It is a different relationship. The responsibility is placed on the management now where there are various claims, where there are various parties claiming to represent various classes of employes. There are a lot of different organizations and there may be various minorities, but this is a process of elimination and they say you must show that you represent the employes. You have never done that.

MR. GOOD: How do you know we have never done it. How do you know we haven't facts and figures to prove conclusively what we do if it is questioned? The Board will have to determine that before they can go through this process of elimination and our position has never been questioned.

MR. ENOCHS: You say nobody has questioned your authority to represent.

MR. GOOD: Our representation of a majority has never been questioned.

MR. ENOCHS: Well, the ballot we are going to take out to take a vote of the employes who are affected

by these rules and regulations, National Agreements, etc., unquestionably will determine that, won't it?

MR. GOOD: No.

MR. ENOCHS: Oh, yes; it will.

MR. GOOD: No, that won't.

MR. ENOCHS: Oh, yes; it is going to determine it.

MR. GOOD: No, you are proposing to elect from divisions, and you are proposing then to elect committees for craft points.

MR. ENOCHS: That is right, but isn't it obvious to you that the mere fact that a ballot of that kind is undertaken that the management does question what organization is the representative organization?

MR. GOOD: Not necessarily.

MR. ENOCHS: It doesn't?

MR. GOOD: No, it indicates this, that you propose by the election of men at different points to establish a new organization, because you provide that they shall elect their chairman.

MR. SMITH: Well, if you have all the representation you say you have, wouldn't that committee when electing your men be the men of your organization?

MR. GOOD: But we have gone over that ground before.

MR. SMITH: You don't know that the men would all vote for you and they may be in the organization.

MR. GOOD: I am not saying they would.

MR. SMITH: Here is a case where you can prove they would. Do you want to do it?

MR. GOOD: I don't want to do it.

MR. SMITH: Well, what are you afraid of?

MR. GOOD: I am not afraid of anything. I am not afraid of anything.

MR. SMITH: Then why shouldn't you go along with it?

MR. GOOD: Because it is unnecessary delay, as I said before. It is an unnecessary delay in negotiations.

MR. SMITH: Delay is all that is bothering you, is it?

MR. GOOD: That is the first principle, that is the delay.

MR. SMITH: That is all, is it?

MR. GOOD: No, that isn't all.

MR. SMITH: What is the other thing?

MR. GOOD: Because it would require going over the ground the second time.

MR. SMITH: How do you mean?

MR. GOOD: We have been elected and sent here and you ask us that we go back and satisfy you.

MR. SMITH: We have a right to be satisfied.

MR. GOOD: Satisfy you at a time that you haven't yourself said that you doubted whether we were representative of the majority or not.

MR. SMITH: We don't know that your men want you to represent them.

MR. BRADY: Let us talk about it calmly. I think you will admit, and I have dealt a whole lot with all of you, and every one of you know I have talked to you fairly every time I did talk to you, without any camouflaging or anything, but I really think you are approaching the thing in the wrong state of mind. There is a responsibility placed on the management. They must determine this thing and they cannot eliminate all these little organizations claiming to represent these employes unless they do this thing in this way. Now if they take their vote and dictate to them who they elect if you want to if you represent all these men

you say you do, and I don't know whether you do or not. They can elect N. P. Good if they want to and no doubt will. That settles it then.

MR. SMITH: No other organization can come in then and say they represent anybody.

MR. GOOD: Mr. Brady, I have to go back to Principle 15 in order to answer you. It says the majority of any craft or class of employes shall have the right to determine what organization. Are you proposing that in this ballot? Now are you adhering to that principle there when you designate that they shall elect committeemen and then say again that representation in that committee in no regard shall be given whatever to union or non-union men, when the principle says that the majority of the crafts shall have the right to determine what organization will represent them. You want to disregard organizations and say that men can sit in the committee whether he is an organization man or isn't.

MR. BRADY: You are allowing your intuitive education, that education you got from day by day living and growing up and associating with men all the time on labor organizations and labor organization questions to destroy your judgment in regard to the use of that particular word. The Labor Board could not say that differently. They had to say organizations. They want the management, as they qualify that word in every particular, to get the majority of the employes to determine the organization that could be set up to take care of the situation. They couldn't express that differently.

MR. GOOD: Mr. Brady, might I not say that your active opposition to certain forms of organization have so distorted your mind as to cause you to inter-

pret this as indicative of the possibility of the establishment of some other form of organization?

MR. BRADY: I am not opposed to organizations.

MR. GOOD: We could charge and counter-charge there and it wouldn't get us anything.

MR. BRADY: I belonged to the Knights of Labor once myself, and I was a chairman once myself.

MR. GOOD: I am going to say this, that it would be impossible, in view of our interpretation of Principle 15, to join you in any proposition that would provide for the election of representatives because the election of representatives is a matter for the organization which represents a majority to determine how many and in what manner they shall be elected.

MR. BRADY: Now just follow that out to its natural conclusion. Assuming that you were correct in that statement, then the Pennsylvania Railroad, in its private management would be forever after, or might be forever after, harassed by all the mushroom organizations that might spring up claiming they represented this, that or the other class. Now it must be determined some time once and for all times. That is the natural conclusion of that.

MR. GOOD: Let me ask you this question. Assuming that such election would be gone into and these seven men sitting here would be the designated representatives; what would you then construe that that represented?

MR. MASSEY: Why, they represent the employes.

MR. GOOD: Then there wouldn't be any organizations. They would be the representatives of the employes and then next year you would have to turn around again or at any time that any one would die or resign from that committee or quit the service of the

company and go elsewhere, you would again designate how that man shall be elected in order that you might know again that he represented a majority of the employes.

MR. MASSEY: How else would you determine it?

MR. GOOD: In other words the organization that these men belong to would constantly be having to give you conclusive evidence that the men they elected represented a majority of the employes on a ballot prepared by you or jointly prepared and there would never be any organization in the sense of the word that I understand the Board has referred to here, but we would be constantly disagreeing with you as to how we would elect the representatives. I understand that the Board has intended that there will be a form of organization among the employes and through that form of organization representatives will be designated to appear before you and deal with you and that that form of organization is to be left to the choice of the employes, that the officers of that organization will be of their own choosing without any joint action between the employes and the company. Now if we are going to get anywhere as a future proposition, we are going to get away from this thing of acting jointly with the company in regard to the selection of men to represent us in our dealings with you. If we are going to comply with Decision No. 119, I understand we are going to have that every time, and if we have got to go through with this form now and then go through it in possibly three or six months and now again, let us see where we are going to head in. Let us, if necessary, go before the Board and if necessary show the Board how many men we represent on the Pennsylvania System and then come back and do busi-

ness with you. I am not going to enter into something here that is going to keep us in an endless jam every time somebody drops off the committee.

MR. MASSEY: What is your objection to this ballot?

MR. GOOD: That is showing the employes and not the organization. Then we got to go back every time a man drops off and go through the same thing again unless we form an organization that would meet with your approval.

MR. MASSEY: We don't care anything about it. It says right there in the statement of the railroad, doesn't it, the representatives chosen by the employes may or may not be union men as the employes themselves decide.

MR. GOOD: Yes.

MR. MASSEY: Let the employes decide that question.

MR. GOOD: Well, for the sake of argument, suppose there would be three or four men that were not members of the organization representing the majority, just for the sake of argument, because that never would happen, but suppose it would happen.

MR. MASSEY: If something isn't going to happen, what is the use of discussing it?

MR. GOOD: Then how are we going to do business?

MR. MASSEY: But you said it wouldn't happen.

MR. GOOD: No, it wouldn't happen.

MR. MASSEY: Then why discuss something that wouldn't happen?

MR. GOOD: Just to simply get in mind what we might run into. The machinists' organization are selecting their officers next month. Mr. Foster is here

representing the machinists at the present time. Now these ballots would go out and Mr. Foster would be the chosen representative of the employes, but he, however, would fail to be re-elected general chairman and in the disposition of grievances and everything of that kind unsettled, that we have on hand, what would be your position?

MR. MASSEY: Suppose Mr. Foster would die in the meantime? Somebody would have to take up his duties, I assume.

MR. SMITH: We are prepared to put a man right in his place.

MR. MASSEY: Why shouldn't the employes have a right to put a man in his place?

MR. GOOD: Why shouldn't the employes?

MR. MASSEY: Yes.

MR. GOOD: Why, the employes done it. The employes put him where he is and the employes will either put him back or put somebody else back in his place, but they are going to do it in the way that they chose to do it in accordance with the principles laid down by the organization and not in a way that somebody dictates to them that they shall do it.

MR. MASSEY: Then as I understand your viewpoint, Mr. Good, all the committee has to do is to come in here and say we were elected by the employes to represent them in their dealings with the carriers. Is that it?

MR. GOOD: No.

MR. ENOCHS: Oh, that is all it is, Mr. Good.

MR. GOOD: No, it isn't, Mr. Enochs, not by any manner of means. You have full knowledge of the laws of our respective organizations. I know that as well as you do. You have full knowledge of the various conventions that we have had. You have had

on your files of your respective offices official notice of the election of these various representatives to confer with you and negotiate with you to a conclusion in regard to any matters in controversy. Over a period of two and a half or three years, three years now, I believe you have had that knowledge and then you take the position that you are in the position today where you are confronted with the proposition that you simply have to submit to a certain body of men appearing before you and making a blanket assertion that they represent a majority of the employes, you have to go ahead and deal with them, that you haven't anything on which you can base reasonable conclusions that this committee is representative of a majority of the men. I am safe in saying that you have a few protests against representation and they are so insignificant in numbers and in character as to not permit you the entertainment of a reasonable doubt.

MR. ENOCHS: No, I don't go along with that first statement, Mr. Good.

MR. GOOD: Well then, Mr. Enochs, again I ask you, for the information of this committee, to furnish us as evidence here why we should go into such negotiations as this, the evidence of doubt that you have in your mind.

MR. ENOCHS: Are you prepared to furnish to the management a list of your dues paying members in good standing as of today, say, all over this system in the classes that you claim to represent?

MR. GOOD: Why, you haven't produced any evidence that we don't represent them that would warrant us doing that.

MR. MASSEY: Are you prepared to produce such evidence?

MR. GOOD: Well, I said a little bit ago we were

ready to produce undisputed evidence, evidence beyond dispute is what I mean. I would like to know what grounds wou have for believing we don't represent them. If you can produce some reasonable evidence that we are not speaking for them and haven't the right to appear before you in that capacity, then we might talk ballot to you.

MR. MASSEY: Well, what is the purpose of putting out the ballot, Mr. Good? The Labor Board don't say that we must go and deal with these de facto organizations, that is the organizations with whom we had been dealing prior to their decision. They say the majority. Now how can we determine the majority except by the vote.

MR. GOOD: I think I have stated my position very clearly on that, Mr. Massey. No reiteration is necessary.

MR. MASSEY: Then, as I understand it, you won't help us solve this problem of letting the employes say by ballot, by a secret ballot, whom they desire to represent them in their dealings with the management on this business?

MR. GOOD: Do you understand me to say that?

MR. MASSEY: Yes.

MR. GOOD: I never made any such statement.

MR. MASSEY: Well, I understand the position then.

MR. GOOD: I said that the majority of the employes on the Pennsylvania System had already acted and had designated their representatives and sent them before you and notified you in advance of their election.

MR. MASSEY: Well, we don't know whether the majority have or have not.

MR. GOOD: You haven't even said that you

doubt it, and you have produced no evidence of reasonable doubt.

MR. MASSEY: Why are we talking ballot?

MR. GOOD: There may be ten men on the entire Pennsylvania System who don't belong to this organization and who belong to some dual organization and you would take the same position because there were ten men. I believe we are entitled to reasonable evidence that we don't represent a majority. You might raise that question on ten men and we would have to go through this ceremony just because there were ten men on the system that did not belong to our organization.

MR. MASSEY: I think we are responsible to know if the men in here claiming to speak for the employes of the majority of the craft or class of employes they claim to represent.

MR. GOOD: Do you doubt that they are?

MR. MASSEY: You haven't shown us any evidence that you are.

MR. GOOD: Do you doubt that we are?

MR. MASSEY: I told you before I don't know whether you do or you don't represent them.

MR. GOOD: I believe we have a right to know before going any further with you whether you doubt it or not. I think we are entitled to clear statement of that.

MR. MASSEY: Well, we have a right to know from you whether you do or not.

MR. GOOD: We have a right to know before presenting such evidence whether you doubt our position or not.

MR. MASSEY: We are giving every employe on this system an opportunity to express by the secret ballot his choice of representatives. Now if he selects

you and Mr. Myer and Mr. Hirshey and Mr. Berger, we don't care. We are asking you to help us out on this thing, to help count the vote and everything else.

MR. GOOD: We take the position this is in violation of Principle 15 and in your letter Principle 5, particularly because you have also stated in your letter here that the vote will be confined to active employes, and that is a disputed question between the management and ourselves now.

MR. ENOCHS: A man who is not an active employe certainly couldn't vote.

MR. GOOD: What do you mean by an active employe?

MR. ENOCHS: A man actually on the rolls or actually in the service.

MR. GOOD: Why he might be out of the service illegally.

MR. MASSEY: But he might be out of the service legally.

MR. GOOD: Yes.

MR. MASSEY: Would you want him to vote if he were out of the service legally?

MR. GOOD: No, but as long as there is in dispute between you and the representative of the employes who are here now as a committee as to whether that man is legally or illegally out of service, are you justified in then saying that that man would not be voted?

MR. MASSEY: Is he on the payroll?

MR. GOOD: Well, you might knock him off the payroll but without our consent. We might be justified in believing that you were absolutely in error in taking his name off the payroll. How could we consistently agree not to vote that man?

MR. MASSEY: Well, of course, the man is an

active employe or not an active employe, and if he is an active employe, his name is on the rolls, and he is drawing money from the company for the service he is performing.

MR. GOOD: I have made my statement in regard to that. I am not drawing any money from the company. I am on the rolls.

MR. MASSEY: You said you were on the rolls or drawing money from the company?

MR. GOOD: No, either on the rolls or drawing money.

MR. MASSEY: Now just exactly how do we understand your position in this matter?

MR. GOOD: I have tried to state my position very clearly, and I believe I have stated it and restated it. This committee appears before you today as the result of correspondence had between Mr. Atterbury, Mr. Krick and ourselves with a desire to arrange the necessary preliminaries in the negotiations of a working agreement in accordance with United States Railroad Labor Board Decision No. 119. We appear before you duly elected to perform that duty, representative of a majority of the shop craft employes on the Pennsylvania System.

MR. ENOCHS: I would like to correct one statement as to how you had appeared before us today due to correspondence had with Mr. Atterbury and Mr. Krick, etc. You appear before us today in response to our invitation which was extended the same to other classes of employes, some who appeared yesterday and some who are going to appear tomorrow at the same time and some who appeared last week and some the week before. That is just all a part of the link in the chain that you might say is revolving around.

MR. GOOD: Let me get you clear, Mr. Enochs.

You utterly disregard our letter to Mr. Atterbury of May 5th and our wire of May 13th addressed to Mr. Atterbury and our wire of the 21st addressed to Mr. Atterbury.

MR. ENOCHS: Well, you made a statement as to why you appeared here and I thought perhaps we knew about as well as you did as to why you appeared here and it was only to correct that part of the record that I made the statement I did. I know exactly why you appeared here. You got the same kind of telegram that other men got.

MR. GOOD: Well, I understand, Mr. Enochs, that we requested a conference. I also understand that we received a reply to that request from Mr. Krick which was very indefinite and as a result of which we notified Mr. Atterbury that we would be here yesterday and I was advised yesterday that the date was set for today on account of the receipt of that telegram as it was not proposed to meet us today had you not received that telegram, so I believed that I was justified in saying that the meeting was the result of correspondence as between your office and ours. We are ready to proceed with the preliminary negotiations that are necessary.

MR. ENOCHS: Well, we are ready to proceed with this determination as to who is the representative committee and that will be done in accordance with the ballot vote.

MR. GOOD: Do I understand that, Mr. Enochs, that you require in submitting a ballot, the employe would be required to signify the person rather than the organization who will represent him in these negotiations?

MR. ENOCHS: We will signify the person who is representing the employe who is going to act in a

representative capacity for the purposes set forth in Decision 119.

MR. GOOD: I would like to have you answer my questions in order that I can get you straight.

MR. ENOCHS: What is your question?

MR. GOOD: I will ask the stenographer to read the question.

> (Question repeated as follows: "Do I understand that, Mr. Enochs, that you require in submitting a ballot, the employe would be required to signify the person rather than the organization who will represent him in these negotiations?")

MR. ENOCHS: We don't care, Mr. Good, in any way to influence a soul. We feel we are not influencing anybody when we submit that ballot.

MR. GOOD: I would like to have you refuse to answer or answer the question as it is asked.

MR. ENOCHS: I will answer it in my own way, Mr. Good.

MR. GOOD: I think I am entitled to an answer to the question.

MR. ENOCHS: What do you want to know?

MR. GOOD: I want the question answered and I don't believe you are justified in making an evasive answer.

MR. ENOCHS: Now there is the ballot laying on the table right in front of you, Mr. Good, and the ballot speaks for itself.

MR. GOOD: But it is agreed that the ballot is not a ballot such as you would submit to the shop craft employes.

MR. ENOCHS: Well that ballot, of course, is made up on a divisional basis and it is our thought the ballot would have to be varied so as to conform to the

shop committee organization. You have everything to gain and nothing to lose, but, unfortunately you cannot see it. I wish we could make it so you could see it but you can't.

MR. GOOD: If a lot of delay is something to be gained, then I expect we are gaining something.

MR. ENOCHS: Now you know, Mr. Foster and Mr. Berger sat across this table in April, 1920, and we weren't going to dot an I or cross a T or put a comma in, but we are still putting the commas in and we are still crossing the T's and still dotting the I's.

MR. GOOD: Yes.

MR. ENOCHS: Now that was April, 1920, and here in April, 1921, twelve months later, and talking about delay, and here is something we are asking you to go along with us, to put this thing in a businesslike, straightforward manner, in a manly way to have a straightforward determination of this issue. We are going to surround it with all possible safeguards or secrecy for the employes and we are asking you men to come in here and see the ballots counted along with the representatives of the management. You will witness anything that is going on and there couldn't be any compounding of any fraud unless everybody was agreed, and I am quite sure the management would not agree to that and I don't believe you men would agree to it. We are asking you to join with us in carrying a vote that is going to determine a jurisdictional question, as I would call it, having been raised, and what difference does it make whether we put an organization on it or just have a mere representative of the employes on it, because, as it seems to me, that unless this issue is determined, those persons who have their feet under the table are pretty well fixed.

MR. GOOD: With regard to whether it matters

if an employe's name appears on that ballot or an organization's name appears on that ballot, I say it makes a vast difference, because the same method of procedure will necessarily have to be gone through in the election of every representative if an employe's name appears, and if an organization's name appears, then any man that that organization might designate in the future as the representative would be that representative, and we don't necessarily have to follow that process of electing him jointly with you. It would be somewhat of a farce, wouldn't it, to have to come up to you every time we wanted to replace a man to represent the men?

MR. MASSEY: It may not be necessary to have an election if members drop out or leave the service. Some arrangement could be set up by this general committee whereby perhaps the General Committee would replace the man who dropped out or left the service.

MR. GOOD: Mr. Massey, we have an organization that represents a majority of the Pennsylvania System employes now and we are their representatives, and I wanted to make that clear in the record.

MR. BERGER: I believe the records will show last April when we appeared here, at least two months after the roads returned back to the private corporation, and we were all sitting before you, I answered Mr. Massey's question about dotting the i's, and crossing the t's and inserting the commas and I believe the records will also show that Mr. Enochs spoke at great length on the great mistake we were making in following that program and I believe my answer again was that we were following a program laid down for us, that we hadn't laid down the program, and you didn't question our rights then. The fact of the matter was you were very desirous of having System

Federation No. 90 representatives and negotiating an agreement aside from the present National Agreement and get rules of our own, and you have stated that one year has elapsed. In reality about one year and one month or thirteen months have elapsed. Now we come before you in compliance with Decision No. 119 and you question the right of these same representatives, this same representative body to negotiate an agreement as prescribed by Principle 15, yet the only principle in there, the only principle that takes care of agreements at all, and you try to bring in Principle No. 7 to take care of some subject matter after the agreement is promulgated, and I believe the records will speak for themselves that you were thoroughly satisfied and willing to go along with System No. 90 and negotiate an agreement for the main purpose of getting away from that National movement and today you question our right.

MR. MASSEY: You weren't willing to do that then, were you?

MR. BERGER: We were willing to negotiate and as far as negotiations were concerned, we have got down and agreed among ourselves what rules we wanted and we told you what rules we wanted.

MR. MASSEY: The whole book.

MR. BERGER: The whole book with the exception of the preliminaries.

MR. MASSEY: No, you wanted that.

MR. BERGER: No.

MR. MASSEY: I beg your pardon.

MR. BERGER: We wanted the Pennsylvania System in there instead of the United States Railroad Administration.

MR. MASSEY: No, you asked for that and when we called your attention to it and asked you if you

wanted to include the United States Railroad Administration; is that not a fact?

MR. BERGER: Well, the records will speak for themselves whether we did or not.

MR. GOOD: Mr. Massey, I recall distinctly Mr. Atterbury's statement before the Board with regard to the committee's appearance here, and I believe it is all a matter of record and it wasn't a question at that time of entering into any changes with the committee that appeared here. The committee that appeared here presented that agrement with the presentation and told you at that time possibly that they were not authorized to make changes. They are not the delegated agreement committee and certainly your committee was open to a return proposition.

MR. SMITH: Mr. Jones at Pittsburgh didn't give us that impression at all.

MR. GOOD: I don't know about that.

MR. ENOCHS: Mr. Berger and Mr. Foster both said, "Here it is, take it or leave it." Is that right, Mr. Foster?

MR. FOSTER: Not in those words.

MR. MASSEY: Not exactly that language but that was your intent.

MR. FOSTER: That is what we were submitting to you but you did not submit a counter proposition.

MR. MASSEY: We said we would be glad to sit down and talk to you and you said you wouldn't take anything but what you were offering.

MR. FOSTER: Not in those words.

MR. MASSEY: You said you couldn't dot an I, cross a T or insert a comma.

MR. GOOD: That phase of it is water over the dam, but here is another phase that isn't water over the dam, and that is the fact our right of representation was not questioned at that time.

MR. ENOCHS: Well, there has been a good many pounds of water that passed down stream since that.

MR. GOOD: In all fairness now, to get our feet on the ground and talk across the table in a way that we will get results, if you do believe that we don't represent a majority of employes on the Pennsylvania System, at that time, wouldn't you have questioned our right to represent them?

MR. MASSEY: We did question the right when we started to negotiate agreements with other organizations, we did question their rights to speak for the employes who they claimed to represent, and not only one but several.

MR. GOOD: Did you do that with classes that you are now negotiating agreements with, require them to submit a ballot to determine whether the men who had appeared for them represented a majority?

MR. ENOCHS: We did with the Signal employes.

MR. GOOD: Did you with the transportation department? If the principle applied before, it ought to apply now. Did you require such a thing as this to determine that these committees which have appeared before you in the Transportation Departments were representing a majority of the employes or did you allow them to determine who would represent them and then they come before you and do business? The principle is the same.

MR. MASSEY: Decision No. 119 abrogates rules, regulations and working conditions promulgated by and under the United States Railroad Administration.

MR. GOOD: I am not talking about that.

MR. MASSEY: Just a minute. That has a decided bearing on it. We had rules and regulations with the train and engine service employes long prior to any government administration. We did not abrogate those. They were still in effect.

MR. GOOD: But when you go back, and when they first appeared before you, did you require that they show you that the committee represented a majority of the employes?

MR. MASSEY: That goes back into 1898. That has been a good many years ago and we didn't have the war and we didn't have the railroad administration and we didn't have the United States Railroad Labor Board in those days.

MR. GOOD: But you had majority representation then as now and this isn't to apply to anything other than a majority representation. That is all it is.

MR. BRADY: Well, I don't want you to labor under any misapprehension so far as I am concerned, Mr. Good. I had something to do with some of the first negotiations that the Pennsylvania had to do with the train service organizations and so far as we are concerned, they did show us that they did represent a majority of the classes they claimed to represent. Now in the promulgation of Supplement 15 and 16 for the conductors, trainmen and enginemen and firemen, and subsequently the promulgation of Supplements 24 and 25 governing the same four organizations, the United States Railroad Administration included therein with respect to wages, hostlers in the firemen's organization and switchtenders in the trainmen's organization. That didn't mean that those organizations could legislate for those particular kinds of employes, and we did require them to take a vote and submit it to us to show us that they actually did represent a majority of those several classes of employes before we allowed them to legislate for them, before we proceeded, four months ago or sometime in January, on a schedule in which those classes of employes were represented. I just wanted to make that clear.

MR. MYERS: Was that done recently, you say?

MR. BRADY: Yes.

MR. MYERS: Done this year?

MR. BRADY: That was done last year, done prior to the starting of the negotiations with the firemen and with the trainmen.

MR. GOOD: Well, Mr. Brady, may I ask you whether there was reasonable doubt as to whether these men had the right to represent, and in one instance didn't you say that there was reasonable doubt?

MR. BRADY: Oh, the American Federation of Railroad Workers were claiming to represent them, and two or three different other organizations were claiming to represent. Now they gave us that vote.

MR. GOOD: I rest the question here on organization but your men are absolutely adhering to employe representation and not organization representation.

MR. BRADY: Well, that responsibility is imposed upon us by Decision No. 119.

MR. GOOD: Well, Mr. Brady, suppose the ballot was submitted to the six shop crafts and a majority of the machinists, their helpers and apprentices would indicate on that ballot that the International Association of Machinists was the organization they desired to negotiate with you in respect to an agreement for them?

MR. BRADY: I will have to tell you ask that particular question of the chairman because I have nothing to do with the handling of this ballot.

MR. MASSEY: Well, you are going to have some hand in it so far as your own region is concerned. This vote would be taken by regions and the Altoona Works. Now I think the ballot would clearly designate, Mr. Good, that it is a vote for individual employes.

MR. GOOD: I am asking, Mr. Massey, what your position would be if a ballot was submitted, a secret ballot, and when returned and counted it showed that a majority of the machinists, their helpers and apprentices on the Pennsylvania System had selected the International Association of Machinists as the medium of negotiation.

MR. MASSEY: Mr. Good, a ballot would be put out as we have shown you, a ballot covering the particular class of employes would be out and the vote would be for individual employes.

MR. GOOD: But I am talking about changing the ballot.

MR. MASSEY: And further, in the position of the Pennsylvania Railroad, they say that the men thus selected will be recognized by the management as empowered to speak for the men by whom they are chosen, and they may or may not be union men as employes themselves decide.

MR. GOOD: Why not change that man who is selected to the organization who is selected and then allow these organizations to chose their men in accordance with their own laws?

MR. MASSEY: Because in the preamble of Decision 119 it says to enable the representatives of employes of each carrier and the officers of that carrier to participate in the formulation of rules under which they must live, and further, in Principle 7, it says:

> "This right of employes to be consulted prior to a decision of management adversely affecting their wages or working conditions shall be agreed to by the management. This right of participation shall be deemed adequately complied with if, when the representatives of a majority of employes of

each of the several classes directly affected shall have conferred with the management."

MR. GOOD: Well, that would be a majority, wouldn't it, if a majority of the machinists, their apprentices and helpers on the system would indicate that the International Association of Machinists should represent them in negotiations? Wouldn't that be a majority of the employes designating an organization that should represent them, and then the organization would in turn and in accordance with paragraph 2 of the decision be designating the representatives who would enter into these negotiations with you.

MR. MASSEY: Yes, but doesn't the preamble speak of the representatives of the majority of the employes of each of the several classes?

MR. GOOD: I understand where the word classes comes from, from a reference to such other bodies, as craft would not properly apply to; for instance the several classes of train service employes, the clerks and different classes of employes of that kind, and the word craft to refer to such bodies of employes as the term properly applies to.

MR. MASSEY: Well, that is my understanding, classes of employes would mean clerks, signal repairmen, bridge carpenters or what not?

MR. GOOD: And crafts would refer to the mechanical section.

MR. MASSEY: Well, Mr. Good, we hoped when we presented this proposition to you that you would go along and co-operate with us and help us solve this problem which is confronting this railroad, and it is not an easy problem to solve, and we wanted your co-operation and support in helping us solve it, and we thought that by taking a secret ballot and placing this

ballot in the hands of each individual employe and letting him express his choice without coercion or intimidation or anything else that we would thus be carrying out the intent of Decision No. 119 of the United States Railroad Labor Board.

MR. GOOD: We don't believe that you are doing that, Mr. Massey?

MR. MASSEY: Well, we are sorry that you cannot see the thing in the same light as we see it.

MR. GOOD: I have asked what your position would be in regard to the submission of a ballot that would indicate an organization and then through the medium of that organization which represented a majority of the craft representatives would be designated would appear before you and confer.

MR. MASSEY: Well, we say in this statement of the management that it makes no difference to us whether a man is a union man or a non-union man if the employes want to elect him. If the employes want to elect a union man, they elect a union man.

MR. GOOD: Mr. Massey, it doesn't make much difference to you what I say if my actions don't bear that out, and I must necessarily say that it doesn't make much difference to me what Mr. Rae or Mr. Atterbury or you say if the facts in the case don't support the statement. Now if it makes no difference to you who the man is then why not let the employes designate the organization and that organization must be representative of a majority of the crafts, after which the organization will be allowed to pick its own representatives in its own way. Now that doesn't make any difference who they are and if it doesn't make any difference who those representatives are, why not do that?

MR. MASSEY: Well, we think this is a fairer

way of having each employe vote for individual employes.

MR. GOOD: Do you think that would be fair, that the majority of the employes will think it is the most fair.

MR. MASSEY: Well, I can only answer that by saying, as I said before, that one ballot has already been sent out covering the men in the signal department and another one covering the employes in the maintenance of way department, and these ballots covering both of these classes of employes were agreed to by the people with whom we have been dealing since the period of Federal control covering those classes of employes, with their consent and with their approval, and we have had before us the representatives of other classes of employes who have gone along with the same proposition who said they considered it perfectly fair and reasonable that the Pennsylvania Railroad should spread a ballot and give each individual employe an opportunity to select by secret ballot the employes who he desired to represent him with the management.

MR. GOOD: In other words you reserve the right to designate your own committee and to help select the other committee?

MR. MASSEY: We are not designating the men's committee. The employes designate that committee.

MR. GOOD: But I say you reserve the right to designate your committee to represent the management.

MR. MASSEY: Yes.

MR. GOOD: And to help to elect a committee representative of the men?

MR. MASSEY: We are not helping select them at all.

MR. GOOD: All right then, answer the other question.

MR. MASSEY: What other question?

MR. GOOD: Suppose the organization would be designated as the representative of the employes and that organization would designate in turn who the representatives would be, wouldn't that decision be complied with?

MR. MASSEY: I wouldn't say it would.

MR. GOOD: Why wouldn't it?

MR. MASSEY: Because it speaks about the representatives of the employes.

MR. GOOD: Just a minute, wouldn't you be doing business with a committee representing the majority?

MR. MASSEY: We wouldn't know whether the men who came here to represent the employes were elected by a majority of the employes.

MR. GOOD: Principle No. 15 doesn't say that. It doesn't say that at all, but it does say this. The majority of any class of craft of employees shall have the right to determine what organization shall represent men of such craft or class, and all we want and what I am asking you now is whether you would agree to allow the employes to designate the organization?

MR. MASSEY: What does the preamble of the decision say?

MR. GOOD: I am asking about the principle. These principles are our guide.

MR. MASSEY: How about Principle 7.

MR. GOOD: Principle 7 is a principle written for the purpose of settling disputes.

MR. MASSEY: Well, aren't there any disputes going to arise when you have a committee?

MR. GOOD: Yes, and in the agreement that will be negotiated it will be, as I understand it, a rule on the basis of Principle 7 to take care of such disputes.

MR. MASSEY: Well, how would you determine that without taking a vote to determine under Principle 7 that the majority of the employes have elected you gentlemen to represent them before the management in settling disputes.

MR. GOOD: In this manner. First an organization has been designated to represent the employes, a majority of the employes. That organization in accordance with its own laws would elect the representatives and those representatives in accordance with their laws, would be the representatives of a majority of all the employes. It wouldn't mean that every man in that organization would necessarily vote for these representatives but under the laws under which he was operating that man would be representing a majority.

MR. MASSEY: And would this representative be elected by a majority of the employes in a craft or class?

MR. GOOD: Absolutely.

MR. MASSEY: I see some of these gentlemen looking at their watches.

MR. BERGER: No, we were just comparing the time. We don't care anything about the time. We just wanted to see whether we had the correct time.

MR. GOOD: There isn't anybody here anxious to get away. We are anxious to come to some understanding if it is possible to reach an understanding.

MR. MASSEY: So are we, and we thought this proposition we had submitted to you gentlemen and asked you to co-operate in helping us to solve, was a fair and reasonable proposition and that any fair minded person would find no fault with it. It gives every individual employe the right to say who he wants to represent him. It gives nobody the right to say who shall represent him but himself.

MR. GOOD: We appeared before you as the representatives of the majority of the employes.

MR. BURRELL: Mr. Good, taking your own figures at 75 per cent. representation of the crafts, suppose that the chairmen are elected by 60 per cent. of the vote. You would have 40 per cent. of the 75 and the other 25 per cent. of the vote for some other organization or some other individual, and would the representative elected by the craft then be elected by a majority of the men?

MR. GOOD: Principle 15 provides that.

MR. BURRELL: Principle 17 provides for a majority representation, does it not?

MR. GOOD: Principle 15 is the principle that provides for the representation.

MR. BURRELL: By a majority of the employes.

MR. GOOD: By a majority of the craft so that a majority of the craft shall determine the organization that shall represent them.

MR. BURRELL: The principle, as I understand it, is a majority of the employes as carried out in Principle 7. It certainly was not the intent of the Labor Board to have a man representing employes that represented less than 50 per cent., and that is the exact situation that you would get into.

MR. MASSEY: As I understand your position on Principle 15, Mr. Good, the majority of any craft or class of employes shall determine what organization shall represent members of that class or craft, would be for the entire and sole purpose of negotiating rules and working conditions to take the place of the National Agreement, and that under Principle 7 after that was done then the majority of the employes of each of the several classes affected would be the ones to deal with the management on any disputes arising thereunder?

MR. GOOD. No, because Principle 15 says that such organizations shall have the right to make an agreement to cover all employes in such craft or class.

MR. MASSEY: Well, what do you understand by Principle 7? What does that mean?

MR. GOOD: Well, Principle 15 has provided the body that shall negotiate an agreement for all employes.

MR. MASSEY: Yes.

MR. GOOD: Principle 7 provides that the right of participation shall be deemed adequately complied with if and when the representatives of a majority of the employes and each of the several classes directly affected shall have conferred with the management. Now Principle 15 has provided that shall constitute a majority of the employes.

MR. MASSEY: Oh, no.

MR. GOOD: Yes, it has.

MR. MASSEY: Oh, no.

MR. GOOD: In my opinion it has.

MR. SMITH: It don't say labor organizations.

MR. GOOD: No, it says organizations.

MR. MASSEY: Not in Principle 7.

MR. GOOD: Principle 15 it does. It says organization in Principle 15, and what would it be but labor organization for a mechanical craft. Can you conceive of anything else but a labor organization for a mechanical craft?

MR. MASSEY: Well, what does Principle 7 mean? That is what I didn't quite get you clear on.

MR. GOOD: Principle 7 then provides that the representatives of a majority of the employes would be the representatives elected by that organization.

MR. MASSEY: Yes, but would they be elected by a majority of employes?

MR. GOOD: There isn't any place that requires that.

MR. MASSEY: It says so in Principle 7.

MR. GOOD: No, it doesn't. It says the representatives of a majority of employes. Now in Principle 15 it provides how that majority representation shall be secured.

MR. MASSEY: No, but it says the representatives of a majority of the employes. Now what does that mean? Would those representatives that you speak of be elected by a majority of the employes?

MR. GOOD: It does not provide in Principle 7 for the negotiation of an agreement, but it does provide for the negotiation of an agreement in Principle 15.

MR. MASSEY: Yes.

MR. GOOD: It provides what shall constitute a majority to affect such an agreement and then in Principle 7 I understand that it handles a disagreement that may arise after that time on the basis of majority representation that is provided for in Principle 15.

MR. MASSEY: Now it says only representatives of a majority of the employes. Now are they elected by a majority of the employes?

MR. GOOD: Does it say they shall be elected by a majority or they are representatives of a majority? It doesn't say elected but it provides that they be representatives of a majority.

MR. MASSEY: How could they be representative of a majority unless the majority had selected them?

MR. GOOD: How could they be?

MR. MASSEY: Yes.

MR. GOOD: Under the laws of the organization they are representative of a majority, certainly. I

want to say to you, Mr. Massey, that you belong to organizations and you have voted, I venture to say, against men and for other men then the men elected and yet the men elected represented you.

MR. MASSEY: Well, were they elected by majority?

MR. GOOD: By a majority of men voting, yes.

MR. MASSEY: Oh, no, it doesn't say that. It says a majority of the employes.

MR. GOOD: It doesn't say a majority of employes either, it doesn't say men elected by a majority, but men representative of a majority.

MR. MASSEY: How can they be representative of a majority unless they have the majority vote?

MR. GOOD: By virtue of the fact they have designated an organization that will be representative of them and then they select out of that organization, in accordance with its laws, their representatives. They have complied with all the laws of that organization and they are representative of a majority.

MR. BERGER: I would say if the Democrats refused to vote in an election or voted for the Republicans that the Republicans would be elected and the Republicans would rule in that instance.

MR. SMITH: But they had a chance to vote.

MR. BERGER: And the Democrats might be in a majority and refuse to vote. In the wording of these two rules the principles are exactly the same. In Principle 15 it says the majority of any class or craft of employes shall have the right to determine what organization shall represent them and then it says this will be adequately complied with when the representatives of that majority have been conferred with.

MR. MASSEY: It don't say repersentatives of th majority of the organizations. It says the representatives of a majority of the employes.

MR. GOOD: Of each of the several classes, and each of the several classes has already designated what organization they want to represent them.

MR. MYERS: Then under your ruling 50,000 employes, if you had that many, and 25,000 voting, there would be no representatives elected.

MR. MASSEY: Unless you have a majority of the employes.

MR. GOOD: What would you do then?

MR. MASSEY: How could you do it? You would have 25,000 voting and 25,000 not voting, and the 25,000 would be dictating the rules and conditions under which the other 25,000 would work.

MR. MYERS: I don't see how you could do it otherwise if you had an opportunity to vote.

MR. GOOD: Suppose there are 45,000, just as a matter of illustration, of shop craft employes on the Pennsylvania System and you submitted a proposition of this kind and there were only 5,000 voted on it, then you would appeal to the Board but at the same time or prior to the time that you would appeal to the Board there would be evidence of representation covering a majority of employes placed on your table.

MR. MASSEY: What would we do?

MR. GOOD: Yes.

MR. MASSEY: Then we would have a majority of the employes saying who they wanted to represent them.

MR. GOOD: In other words you would refuse to recognize anything but this.

MR. MASSEY: Which?

MR. GOOD: The ballot.

MR. MASSEY: We think that is perfectly fair.

MR. GOOD: You are taking the position you would not recognize anything but this.

MR. MASSEY: We think it is perfectly fair and perfectly reasonable.

MR. GOOD: We think it is perfectly fair and reasonable to say to you that we would not go along with that ballot. We are willing to go as far as we can go but we cannot go along with that.

MR. MASSEY: But how would you correct that ballot?

MR. GOOD: I answered you a little while ago. If I were going to submit any kind of a ballot, I would submit it under Principle 15.

MR. MASSEY: We have.

MR. GOOD: The Board has called upon the craft, a majority of the craft, to determine what organization shall represent members of that craft. I would call on the men to designate what organization should represent them.

MR. MASSEY: Don't we call their attention to Principle 15?

MR. GOOD: Yes, but you distort it by confusing it with Principle 7. Now let us take Principle 15 as it lies.

MR. MASSEY: What is your proposition on the ballot then?

MR. GOOD: My proposition, and the only proposition that would be reasonable at all in my mind would be to allow the employe the right to designate the organization that would represent the members of that craft. If they don't want any organization to represent them, let them say so, and if they want to deal individually, let them deal individually.

MR. MASSEY: But doesn't this give them the same right if they want to vote for you or for Mr. Berger or for Mr. Foster?

MR. GOOD: No, it doesn't.

MR. MASSEY: Why not?

MR. GOOD: It doesn't.

MR. MASSEY: Certainly it does.

MR. GOOD: If the majority of the Pennsylvania System employes belong to an organization and they want to do business with you through that organization and not as individual employes, they have the right under Principle 15 to do that.

MR. MASSEY: Well, they have selected their representatives, Mr. Good.

MR. BERGER: That is why we are here.

MR. GOOD: I know they have. There is no question about it.

MR. HERSHEY: We are here to do business too.

MR. GOOD: May I have a few minutes to confer with the other members of the committee?

MR. MASSEY: Certainly.

(Mr. Good conferred with other members of his committee.)

MR. MASSEY: Have you anything further to say, Mr. Good?

MR. GOOD: Well, not very much, Mr. Massey, just now. We are unanimously agreed that the ballot you propose to submit is not in conformity with the provisions of the sixteen principles laid down by the United States Railroad Labor Board in its Decision No. 119, and we would like to know what position you take in regard to the question I asked you a few minutes ago.

MR. MASSEY: I take the position, Mr. Good, that in spreading this ballot the way we have proposed that we are living up to the intent of Decision 119.

MR. GOOD: May I have a few copies of that ballot?

MR. MASSEY: I don't know whether we have got them or not.

MR. GOOD: I would like to know what we are talking on and have a chance to study what we have in front of us.

MR. MASSEY: Well, we are perfectly willing. We don't want to hurry you in this thing. We are perfectly willing to give you a reasonable time to make a further study of this thing after our discussion here this afternoon. You touched on the question of delay, rather assuming on that, I think, that you were going to be charged with the delay. Now it wouldn't be my understanding that you would be charged with the delay, because if there is delay on the part of the employe one thing happens and if there is delay on the part of the carrier, another thing happens. Now the only way that could get to the Board would be either for you to say we had delayed it or we to say you had delayed it.

MR. GOOD: I believe that I made my position clear there by saying that I believed that we would be unnecessarily delaying it by going into a proposition of this kind and that I would be compelled to register a protest to the Board against such a plan of procedure, being convinced of my right or the right of this committee to appear before you as representatives of a majority, particularly on the grounds that you were simply refusing to go into negotiation with us without presenting any evidence whatever that we were not representatives of a majority, and by the simple statement, or rather because of the simple statement that there were many other organizations who might protest our right to represent them. I am going to say to you that I believe that that would only tend to strengthen our case.

MR. MASSEY: I don't think that it was said that we were taking this ballot because there might

be other organizations who might protest your representing the employes. I think Mr. Brady told you our then Supplements 15 and 16 and 24 and 25 came out and the Railroad Administration order switchtenders and so forth included, how the organizations were required to show they did represent a majority of switchtenders. As I understand that was explained to you. Now, as I explained, the signal maintainers and the Maintenance of Way people we have spread this ballot out for, or, in the case of the signal men, it has gone out and in the case of the Maintenance of Way men it goes out today. Now we would question anybody's right to represent the employes when we begun to negotiate an agreement on rules and regulations covering that class of employes. For example, we have clerks, and I am just using them as typical. They were working under National Agreement, but when it came time to negotiate an agreement on rules and regulations, we would say to the clerks, "You must show us that you do represent the employes whom you claim to speak for." So, regardless of whether there was any protest from anybody, any committee of employes coming in to negotiate rules and regulations affecting the employes of the class which they claimed to represent, we would challenge their right and want to be shown that they did represent a majority of that class.

MR. GOOD: Well, again we take objection to this ballot on the ground that you have specified that it will be necessary to select a chairman who is an employe of the Pennsylvania System. Such stipulation is, in our opinion, in direct conflict with Principle 5. We could not agree to it because we are satisfied it is in direct conflict with Principle 5. You have stated that voting will be confined to active employes.

MR. MASSEY: Yes.

MR. GOOD: There is a dispute between the management and our committee as to what constitutes an active employe.

MR. MASSEY: Is there any particular individual involved in that?

MR. GOOD: I believe that there are grievances now being handled with the superintendents naming individuals. Then you have stated this vote is to be taken without reference to or consideration of membership or non-membership in any organization, while Principle 15 specifically provides such representation shall be by organization.

MR. MASSEY: We say that the individual votes regardless of whether he belongs to a labor organization or does not belong to an organization.

MR. GOOD: Yes, that is your statement.

MR. MASSEY: Every employe, in other words, has the opportunity to vote.

MR. GOOD: But after that vote is taken and counted you provide for the formation of an organization.

MR. MASSEY: Well, we say how the General Committee will organize.

MR. GOOD: You provide for organization.

MR. MASSEY: We say how the general committee will organize.

MR. GOOD: Then you propose to say how to establish an organization rather than the employes selecting the organization.

MR. MASSEY: No, after these representatives are elected they will get together and select their representatives. We are not selecting them.

MR. GOOD: I am afraid if things were not very thoroughly controlled and there wasn't a very har-

monious spirit among the committee, this ballot would make a "mell of a hess". We cannot go along with a condition of that kind but we will go along and join you in submitting a ballot to all shop craft employes allowing them to designate on that ballot what organization, if any, they desire to represent them in these negotiations and in future transaction of business with the management of this railroad. Then it is understood that that organization will be ready to select its own representatives under its own laws, those representatives to be considered as representing the majority of employes.

MR. MASSEY: As I said, Mr. Good, as we understand the intent of Decision No. 119, the ballot that we have suggested to you to be put out is clearly within the intent of that decision.

MR. GOOD: Then there appears to be a doubt concerning particularly Principle 15, does there?

MR. MASSEY: Have you read this statement of the management?

MR. GOOD: I would rather read the decision.

MR. MASSEY: Now you asked me a question.

MR. GOOD: I thought it was a statement rather than a question.

MR. MASSEY: If you will read that first paragraph on the top of the second column, it says:

> "There is an apparent discrepancy between principle No. 7 and Principle No. 15, but the intent of the decision, as stated in the preamble, is to enable the representatives of employes of each carrier and the officers of that carrier to participate in the formation of rules under which they must live."

MR. GOOD: We don't understand that that dis-

crepancy exists, inasmuch as we believe that the principle as used here is not so intended. Will you join in a submission to the Labor Board for an interpretation of Principle 15, suspending any further action until we do that?

MR. MASSEY: There is nothing to prevent you from going to the Board, is there, Mr. Good?

MR. GOOD: I am asking you if you will join us.

MR. MASSEY: Why, we wanted to get this vote out. We wanted to see who the men want to represent them so we could sit down across the table and start the negotiations.

MR. GOOD: Well, we are mighty anxious to get these negotiations started too, with the understanding all the while that you are not going to do something that is going to meet with the disapproval of your employes, not something that will meet with approval. We didn't think you wanted to autocratically put something over that is going to meet with their disapproval.

MR. MASSEY: We haven't any intention of autocratically putting over anything that will not meet with the approval of the employes.

MR. GOOD: I am afraid they will take that position if you proceed to do that when there is a reasonable doubt in your mind and our minds as to what the proper interpretation of Principle 15 is.

MR. MASSEY: Well, there is no doubt in our minds.

MR. GOOD: Well, there is no doubt in our minds but our opinions are not in conformity with each other and then there must be a reasonable doubt between us.

MR. MASSEY: There is no doubt in our minds what it means, what the intent was.

MR. GOOD: Well, we haven't any doubt as to what

the intent was either but what we believe it means and what you believe it means are widely divergent.

MR. MASSEY: Yes, apparently.

MR. GOOD: Now in view of that isn't it the better and the quicker way for us to get together and submit this question to the Board and ask them to give us an interpretation at the earliest possible date?

MR. MASSEY: Well, I am afraid that the Labor Board is pretty well loaded up now. You know they have set June 6th as the date of hearing for all classes of employes who have not yet presented to the Board on reduction of wages.

MR. GOOD: Well, do you want to do something that will meet with the approval of the majority of the employes?

MR. MASSEY: We think we are doing something that will absolutely meet with the approval of the majority of the employes when we are giving every employe an opportunity to select his representatives.

MR. GOOD: Will you allow me to just drop my office for a minute and tell you my opinion as an employe. I am an employe of the company and if I were back in the shops working, I would naturally be one of the fellows that would have a say in this.

MR. MASSEY: Yes.

MR. GOOD: I wouldn't approve of it, using my own judgment I wouldn't approve of it, particularly if I belonged to an organization that I knew its membership and I was advised by the officers of the organizations that they had asked you to suspend action until we could reconcile our views or get an interpretation. I am sure you would not be acting in conformity with my ideas of right. I would be compelled to take the position that you were insisting that I do something.

MR. MASSEY: No, I am not insisting.

MR. GOOD: That I wouldn't do.

MR. MASSEY: I am not insisting that you do anything.

MR. GOOD: And you were putting out a ballot.

MR. MASSEY: You don't have to vote.

MR. GOOD: I know it.

MR. MASSEY: I am not insisting that you vote, Mr. Good. I am simply giving you the means of voting and selecting your representatives. Now if you don't want to exercise that, that is a matter for you to decide as an individual, isn't it?

MR. GOOD: Well, let us see what the result would be. If you were to go ahead and submit that ballot, and the majority of the employes didn't vote, you said a little while ago you would feel it was then a matter for the attention of the Labor Board.

MR. MASSEY: Well, I said this, that if a majority of the employes in a craft or class did not vote to elect their representatives, that the only other alternative would be to put in rules and regulations and tell the Labor Board what had been done.

MR. GOOD: Well, I say you said you would go to the Board.

MR. MASSEY: Yes, tell the Labor Board what we had done.

MR. GOOD: In the meantime we would take the position, naturally, that we did represent a majority of the employes, producing the evidence of our representation, advising the Board that we were willing to go before them, join with you in requesting an interpretation of Principle 15, to determine whether they had reference to the right of the employe to select his organization and through the medium of that organization transact his business or not, and I think

we will have some more delay and I think you will agree with me that we will have some more delay.

MR. MASSEY: Well, I don't know how much delay there would be in that, of course, but there should be very little delay in this, in getting this ballot out and getting the vote taken.

MR. GOOD: Well, I am going to say to you that we would be compelled to tell the membership what we have endeavored to do, how we have endeavored to handle this question, that you have refused to do that with us and insisting on your rights to submit that ballot regardless, and then I question whether you will get a majority vote or not.

MR. ENOCHS: This ballot is going to be handed to every employe in an envelope that is to be sealed and a record will be made of his refusal to take it if he does not take it or if he does take it, he signs a receipt for it. If he doesn't vote, that is all there is to it. There will be a thorough canvass made and a record kept of every employe that receives the ballot. We won't go to Cramp's Ship Yard to get any or any place else.

MR. BERGER: There is no coercion in that method?

MR. ENOCHS: None whatever.

MR. MASSEY: In what way, Mr. Berger?

MR. BERGER: The foreman hands a ballot to a man and gets his receipt for it and naturally 99 out of every hundred foremen will ask you where is that ballot that I gave you.

MR. MASSEY: No, we told you the superintendent.

MR. BERGER: All right, but he will ask questions about it. You say there is a checkup, that there is going to be a full canvass to find out about it.

MR. MASSEY: No, we didn't say anything of that kind.

MR. BERGER: He wants to co-operate and then comes down and hands an ultimatum to us. We have handed something to them for co-operation right across the table.

MR. ENOCHS: I didn't make any such statement as you stated there, Mr. Berger.

MR. BERGER: I will leave the record state for itself.

MR. ENOCHS: I will ask the stenographer to read what I said.

(Statement repeated as follows:)

> "This ballot is going to be handed to every employe in an envelope that is to be sealed and a record will be made of his refusal to take it if he does not take it or if he does take it, he signs a receipt for it. If he doesn't vote, that is all there is to it. There will be a thorough canvass made and a record kept of every employe that receives the ballot."

MR. GOOD: Failure to receive the ballot would also provide a record of the men who failed to vote. It has a negative as well as an affirmative result.

MR. ENOCHS: We are going to make it a dead certainty that every employe has an opportunity to vote. That is the only purpose of checking up the ballot and you must have a full list first of those who are entitled to vote and of those to whom the ballot has been given.

MR. GOOD: Well, we won't go along with that plan. I am asking you if you will modify your proposition. I will modify our proposal to submit a ballot allowing the employe to designate the organization

that he desires to have represent him, as outlined a little bit ago. If you will not do that will you join with us in requesting the Labor Board to interpret Principle No. 15?

MR. MASSEY: I don't think it would be carrying out the decision of the Labor Board unless a majority of the employes designated the representatives.

MR. GOOD: Then I understand you refuse to comply without request?

MR. MASSEY: Yes.

MR. GOOD: We can't get any further. I see that. We are compelled to take the position that you are unnecessarily delaying the negotiations.

MR. MASSEY: Well, you know what the Labor Board says in their decision on that, Mr. Good.

MR. GOOD: Yes, I do.

MR. MASSEY: So do I. That is the reason why I wondered why you told me about it.

MR. GOOD: I feel it is only fair to have you understand that we expect to notify them to that effect at once.

MR. MASSEY: I understand that.

MR. GOOD: I felt you ought to but I didn't want you to feel that I was going out of here and notify them without having you understand that that was our intention.

Meeting adjourned.

PLAINTIFFS' EXHIBIT No. 4.

OFFICIAL BALLOT

For All Pennsylvania System Shop Employes Covered By the National Agreement

Do you desire to be represented by System Federation No. 90 of the Railway Employes Department, of the American Federation of Labor, through its designated, and duly authorized representatives, in negotiating an agreement with the Management of the Pennsylvania System?

YES [X in longhand] | X |

Mark X Opposite Your Choice.....

NO | |

If voting NO, write name of organization you desire to have represent you on the line below.

.....

Detach at Perforated Line Below and Deposit in Separate Ballot Boxes

---

Name W. S. Burger, [in longhand]

Date 6-3-21 Occupation Maintainer T & T D.

Location Sunbury Division Sunbury.

This ballot and stub should be forwarded to Mr. H. A. Bixler, Secretary System Federation No. 90, No. 414 Morewood Bldg., East End, Pittsburgh, Pa., on or before June 7, 1921.

NOTE—This ballot is not confined to the membership of any organization, and all employes now classified under the National Agreement, covering shop employes, are urged to vote.

The Management has raised the question as to who has the authority to negotiate an agreement, to cover the six shop crafts, and in order to decide this question definitely we are compelled to use this means of having the employes express their sentiments by their votes.

DON'T LEAVE THIS TO THE OTHER FELLOW;
"DO YOUR DUTY NOW"

PLAINTIFFS' EXHIBIT No. 5.

Penna. R. R. Co. W. J. & S. R. R. Co. N. Y., P. & N. R. R. Co. P., C., C. & St. L. R. R. Co. G. R. and I. Ry. Co. C. V. & M. R. R. Co. C., L. & N. Ry. Co. L. B. & T. Ry. Co. W. & W. R. R. Co. O. R. & W. Ry. Co. P. & C. Ferry Co.

PENNSYLVANIA SYSTEM
Central Region
Pittsburgh Division
Transportation Department

R. T. Morrow,
Superintendent

2-a Pittsburgh July 15, 1921

Mr. N. P. Good,
Apartment No. 1, Munson Building,
Eleanor St., Pitcairn, Penna.

Dear Sir:

Referring to the furlough which was granted you from your position as Machinist at Pitcairn.

It has now been decided that this furlough will expire July 25, 1921 and you will, therefore, be expected to report for duty on or before July 25, 1921.

Yours truly,
R. T. Morrow,
Superintendent.

PLAINTIFFS' EXHIBIT No. 6.

July 22, 1921.

In Re: Cancellation of Furlough.

Mr. R. T. Morrow,
Supt.—Pennsylvania System,
Pennsylvania Station,
Pittsburgh, Penna.

Dear Sir:

Answering your letters of July 15 and 21, which were received by me July 21 and 22 respectively, in which you advise that the furlough granted me from my position as machinist at Pitcairn, Penna., will expire July 25, 1921, and that I will therefore be expected to report for duty on or before that date.

I am at a loss to understand this action on the part of the Management of the Pennsylvania Railroad Company, for whom I assume you are speaking, since there is no change of which I have any knowledge that does not justify the continuation of my furlough for the purpose of representing the employees of the Pennsylvania Railroad who elected me to this office, the result of which the furlough was originally requested.

One of the predominating objections which has also been apparent in our late dealings with the Management of the Pennsylvania Railroad has been its constant insistence that not one group of employees should have the right to force upon another group of employees any form of organization which was not satisfactory to them and which did not provide them with the opportunity of the form of representation they desired, and it seems to me the position you have taken in the letters above referred to is entirely inconsistent with assertion made to various government tribunals. I have in mind particularly Mr. Wallis's late statement to the United States Labor Board July 8, 1921, a por-

tion of which you will find on page #195 of the "Proceedings of the United States Railroad Labor Board," Docket #404, Federated Shop Crafts vs. Pennsylvania Railroad, regarding Negotiation of Agreement" which reads in part as follows:

> "Your Decision No. 119 has indicated to us that any set of rules negotiated between the employees of the carrier and the Management, complying with the principles in Decision No. 119, will receive your approval. Your interpretation No. 5 has altered our view of your intent. We cannot understand why you should deny a minority the right to make an agreement provided it does not infringe the rights of the majority. We cannot escape the conclusion that you are denying to the minority one of their rights, and forcing them to agree with and be subservient to the union majority."

Mr. Wallis here takes the position that the right of a minority to make an agreement should not be denied providing that such agreement does not infringe the rights of the majority, how then, can the Management of the Pennsylvania Railroad consistently deny the right of "majority" to make an agreement under plans laid down by tribunals created by, and thru, the laws of the United States Government?

The furlough which I have enjoyed as a representative of the majority of the Shop Crafts on the Pennsylvania Railroad is a result of an act of the United States Government, and we understand is still authorized by virtue of the order of the United States Labor Board in Addendum #2 and from telegram of July 29, 1921, addressed to Mr. B. M. Jewell, President—Railway Employes' Department, A. F. L., and Mr. W. W. Atterbury, Vice President in Charge of Operation of the Pennsylvania Railroad System.

I note with particular interest Mr. Wallis's statement in this same article to the Board, also in the statement to Mr. E. T. Whiter, wherein they infer that the Board does not have the authority to extend the Rules of the National Agreement, and in this it appears that they are again inconsistent for the following reasons:

(A) The authority of the Board to issue Decision #2 (Dockets 1, 2 and 3) was recognized and the Decision accepted by both the Pennsylvania Management and the employees.

(B) The authority of the United States Labor Board to abrogate the Rules of the National Agreement was recognized and hearings covering an extended period were conducted by the Board and engaged in by representatives of the carrier.

(C) The authority of the Board in Decision #119 to abrogate the Rules as of July 1, 1921, was again recognized by the carrier but the carrier has apparently denied the right of the Board to do so provisionally when the provision meant the extension of the Rules beyond July 1st., 1921 because of certain conditions.

As an employee of the Pennsylvania Railroad and a representative of a majority of the employees, it seems to me proper to ask why the Management of the Pennsylvania Railroad does not recognize the right of the Board to extend certain conditions over which its right to terminate has been recognized by the Management.

From Addendum #2 to Decision #119 and the Board's telegram of July 29, 1921, addressed to Mr. Jewell and Mr. Atterbury, we understand that the Labor Board recognized the existence of a dispute by setting a date for hearing and decision thereof, and

that in the interim the provisions of Addendum #2 would continue in effect the Rules of the National Agreement.

One of the Rules of the National Agreement is Rule #39 which provides that—

> "The company will not discriminate against any committeemen who, from time to time, represent other employees, and will grant them leave of absence and free transportation when delegated to represent other employees."

I am only asking that this Rule which does not in any sense imply—closed shop conditions, be recognized and applied to representatives of a majority of the employees since we do not want to believe it is the intention of the Management of the Pennsylvania Railroad to force upon its employees a form of representation which is not acceptable to a majority of them, and thereby, autocratically install the closed shop practice which they have so consistently and earnestly fought against in all of your negotiations.

It is my desire as an employee of the Pennsylvania Railroad Company and a representative of the employees to conserve the best interest of my employer as well as the employees and the public, and to adhere strictly to laws and orders laid down by, and thru, tribunals created under Government laws, and I do not understand it is the intention of the Management of the Pennsylvania Railroad to knowingly and willingly set aside these laws in order to further their own selfish interests and with utter disregard of the wishes of the majority of their employees. Therefore, in view of the fact there is no change in the sentiment of the majority of the employees with regard to my continuing as their representative, and there is no change in the laws which extends to me that right, I would be

glad to be advised at a very early date the reasons assigned by the Management of the Pennsylvania Railroad for cancelling my furlough and notifying me to return to work July 25, 1921.

Trusting I may be favored with a very early reply, I am,

Yours very truly,

NPG-MM President.

PLAINTIFFS' EXHIBIT No. 7.

PENNSYLVANIA SYSTEM
Central Region
Pittsburgh Division
Transportation Department

R. T. Morrow,
Superintendent

2-a Pittsburgh July 23, 1921

Mr. N. P. Good,
Apartment No. 1, Munson Building,
Eleanor St., Pitcairn, Pa.

Dear Sir:

In connection with your letter of July 22nd, having reference to our communication of July 15, 1921.

We wish to reaffirm the advice contained in our communication to the effect that it has been decided to cancel your furlough effective as of July 25, 1921.

Yours truly,
R. T. Morrow,
Superintendent.

PLAINTIFFS' EXHIBIT No. 8.

ENVELOPE.

[Printed on front as follows:]

PENNSYLVANIA SYSTEM R. R. S.

EASTERN REGION

Maintenance of Equipment and Telegraph and Telephone

Shop Crafts Mechanics, Helpers and Apprentices.

Maintenance of Equipment and Telegraph and Telephone.

NOTICE

Enclosed you will find three envelopes and a statement with ballot attached. Fill out the ballot and tear it off on the dotted line. Fold it and put in smallest envelope. Seal this envelope and put it in the next larger envelope with your name, occupation, location and division in the upper left hand corner. Put this envelope in the large envelope addressed to Superintendent and mail by Railroad Service or United States mail not later than Monday, June 6, 1921.

[On inside of envelope appear one large envelope, two small envelopes, and ballot, as follows:]

[Large envelope:]

PENNSYLVANIA SYSTEM R. R. S

Eastern Region

Superintendent

Williamsport Division

Williamsport

PERSONAL Pa.

[Small envelope:]

This envelope to be opened only by tellers of election in the General Manager's office

EASTERN REGION
Shop Crafts, Mechanics,
Helpers, and Apprentices
Employe Voting:
Name .....
Occupation .....
Location .....
Division .....
Use this envelope to enclose small envelope containing your Ballot

[Small envelope:]

Put no marks of identification on this envelope
This envelope to be opened only by tellers
of election in the General Manager's office

OFFICIAL BALLOT

Place your BALLOT in this envelope and SEAL IT.

[Ballot:]

PENNSYLVANIA SYSTEM
Eastern Region

May 26, 1921.

Decision No. 119 of the United States Railroad Labor Board ceases and terminates on July 1, 1921, the rules, working conditions and agreements in force under the authority of the United States Railroad Administration.

The Labor Board directs that the management and employes designate and authorize representatives to confer and decide rules and working conditions, such conferences to begin at the earliest possible date. Undue delay on the part of carrier may cause extension of rules, working conditions and agreements beyond July 1st. Undue delay on the part of employes may cause termination at an earlier date.

The Labor Board laid down sixteen principles to be kept in mind in negotiations between the management and employes. Principle No. 15 reads as follows:

> "The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice."

In order to fairly determine the employes' choice of representation, a vote will be taken by letter ballot as set forth below.

This vote is to be taken without reference to or consideration of the membership or non-membership in any organization. Employes are free to vote their choice according to their own interests and without prejudice. Voting will be confined to active employes.

The employes under each Master Mechanic including shop craft employes in other departments of the same division or territory will vote for three employe representatives from the craft in which they are employed to constitute a Local Craft Committee. If empowered by a majority vote of employes the Local Craft Committee will select from among their number a Local Chairman, who will be a member of the Division Committee, who will speak and act for the employes before the Division Officers.

The Local Chairman of each craft in this region will elect from among their number one craft representative who will be a member of the Regional Gen-

eral Committee. The Regional General Committee will speak and act for the employes before the General Superintendents and General Manager.

Two or more votes in one envelope and two or more votes from any one employe will not be counted.

Enclosed are three envelopes. Ballot, when filled out, should be placed in small envelope marked "Official Ballot" and envelope sealed. This envelope should then be placed in the envelope having in upper left hand corner blank spaces for name, occupation, location and division of the employe filling out the ballot. These blank spaces must be filled in and this envelope should then be sealed and placed in the large envelope addressed to Superintendent, and mailed by Railroad Service or United States Mail.

Count of ballots will begin Monday, June 13, 1921, at 9 A. M., Eastern Time, Room 53, Broad Street Station, Philadelphia, Pa., in the presence of representatives of the management and such representatives of the employes as desire to be present.

BALLOT

I hereby cast my note for the employes shown below, to act as my representatives on..... Division, in connection with negotiations concerning disposition of the matter covered in Decision No. 119, United States Railroad Labor Board.

CHOICE OF REPRESENTATIVE COMMITTEE

VOTE FOR THREE*

Name of Committeeman Voted for.

.....

Occupation .....

Location .....

Division .....

Name of Committeeman Voted for.

.....

Occupation .....

Location .....

Division .....

Name of Committeeman Voted for.

.....

Occupation .....

Location .....

Division .....

Monday, June 6, 1921, is fixed for the day of the election and ballots must be forwarded not later than that date by train service or by United States Mail to the Superintendent, who will check against the payrolls to see that all those voted are employes. Ballots with the poll list or roster will then be promptly forwarded by registered mail to the General Manager, who will arrange for the count to begin on Monday, June 13, 1921, at 9 A. M., Eastern Time, Room 53, Broad Street Station, Philadelphia, Pa.

**Give in each case the Name, Occupation, Location and Division of the person for whom you are voting to represent you.*

PLAINTIFFS' EXHIBIT No. 9.

THE ASSOCIATION OF SHOP CRAFT EMPLOYES

OF THE

EASTERN REGION

PENNSYLVANIA SYSTEM

Excluding Hoboken Shops

BY-LAWS.

Effective August 18, 1921.

The Association of Shop Craft Employes of the Eastern Region, Pennsylvania System Excluding Hoboken Shops

Copy of Memorandum of Understanding Covering Method to Be Followed in the Handling of Questions Between the Pennsylvania System Management, Eastern Region, and Its Mechanics, Helpers and Apprentices in the Maintenance of Equipment Forces (Excluding Hoboken Shops).

PREAMBLE.

In order to establish satisfactory working conditions, adjust differences as they may arise, and promote a mutual understanding between the officers of the Pennsylvania System and the Maintenance of Equipment forces of the Eastern Region, these By-Laws are hereby adopted.

TITLE.

This association shall be known as "The Association of Shop Craft Employes of the Eastern Region, Pennsylvania System."

ARTICLE I.

Membership.

Section 1. All Mechanics, Helpers and Appren-

tices who are actively engaged in the Maintenance of Equipment forces, Eastern Region, Pennsylvania System, who are not acting in a supervisory capacity, shall be entitled to membership in this association.

Sec. 2. Membership in this association shall terminate on severance of active employment in the service of the company.

ARTICLE II.

Representation.

Section 1. Those who may participate in this association, as defined in Article I, Section 1, in each craft on each Division, shall be entitled to elect from among their number three representatives to represent that craft on that Division.

Sec. 2. Representatives shall be elected for a term of one year and shall be eligible for re-election.

Sec. 3. A representative shall be deemed to have vacated office upon severance of active relations with the company or upon assuming a position of a supervisory nature.

Sec. 4. In case of vacancy on a Local Committee the vacancy shall be filled by the remaining members of the committee. In the event they cannot reach a decision, or in the event that there are two or more vacancies occurring on one Local Committee at the same time, the vacancies so occurring shall then be filled by the Regional General Committee. The representative or representatives thus selected shall serve until the next election.

ARTICLE III.

Qualifications of Voters and Representatives.

Section 1. All employes who are entitled to participate in this association, as provided in Article I, shall be entitled to petition for nominees and vote at all elections.

Sec. 2. Those employes who are entitled to participate in this association, who have had two years or more continuous service with the company prior to the date of election, who are American citizens and who are twenty-one years of age or over on the date of election, shall be eligible to the office of representative.

Sec. 3. Members of each craft in this association shall be entitled to vote only for those representatives who are to represent that craft.

ARTICLE IV.

Nominations and Elections.

Section 1. Nominations and elections shall be held annually in the month of May.

Sec. 2. Nominations shall be held on the first Monday and election on the third Monday in the month named. In the event of either of these days being a holiday, the day immediately following shall be substituted.

Sec. 3. Nominations and elections shall be conducted by the members of this association in accordance with rules and regulations prescribed by the Regional Joint Committee, acting as a Rules Committee with only such assistance from the management as may be required by said committee.

Sec. 4. Elections shall be by secret ballot and so conducted as to avoid undue influence or interference with voters in any manner whatsoever and to prevent any fraud in the counting of ballots.

Sec. 5. Nominations shall be by petition. Petitions signed by 25 qualified voters in each craft, or by 25% of the qualified voters in each craft, or by 25% of the voters in that craft, in the election district shall place the name of the one petitioned for upon the election ballot for that craft.

Sec. 6. The election ballot for each Division shall contain the names of all those placed in nomination by each craft as a result of petition on that Division.

Sec. 7. The number of candidates for which a voter is entitled to vote shall be stated on the ballot. If this number is exceeded the ballot shall be void.

Sec. 8. The voter shall indicate his preference on the election ballot by placing a cross (X) opposite the name or names of the candidates he wishes to elect. Any other mark or marks shall render the ballot void.

Sec. 9. The Regional Joint Committee, acting as a Rules Committee, shall determine:

(*a*) The type and location of ballot boxes and voting booths.

(*b*) The hours during which the voting will be conducted.

(*c*) The form of letter ballot to be used by those voting by mail.

(*d*) The conditions under which a voted will be permitted to vote by mail.

Sec. 10. The candidate or candidates receiving the highest number of votes in each craft shall be declared elected. In the event of a tie, the Regional Joint Committee, acting as a Rules Committee, shall order a special election to break the tie. At this special election only the names of the candidates who are tied will appear on the ballot.

Sec. 11. In the event of a controversy arising concerning any nomination or election, it shall be referred to and decided by the Regional Joint Committee, acting as a Rules Committee.

Sec. 12. Immediately following the counting of ballots, the Regional Joint Committee, acting as a Rules Committee, shall prepare an election certificate, a copy of which shall be furnished each representative

elected, a copy posted on bulletin boards and a copy furnished to the Division Superintendent.

ARTICLE V.

Local Committees.

Section 1. The elected representatives of each craft on each Division shall constitute the Local Committee for that craft on that Division and shall meet on the first Monday in June of each year for the purpose of organizing. At this meeting each of the Local Committees shall elect a Chairman from their number to serve one year.

Sec. 2. Meetings of the Local Committees may be called b ytheir Chairman as occasion demands.

ARTICLE VI.

The Regional General Committee.

Section 1. The Regional General Committee shall be composed of a General Chairman representing all crafts together with a General Craft Chairman from each respective craft.

Sec. 2. The General Chairman representing all crafts shall be elected for a term of two years by the Local Committee Chairmen of all crafts.

Sec. 3. The General Craft Chairman of each craft shall be elected for a term of two years by the Local Committee Chairmen of that craft.

Sec. 4. The General Chairman and General Craft Chairmen shall be elected at a Regional Convention, to be held on the third Tuesday in June of each odd numbered year, beginning with 1923.

Sec. 5. The Regional General Committee shall be elected from among the Local Chairmen, or the retiring Regional General Committee, or both.

Sec. 6. The Regional General Committee at its first meeting after its election shall elect a Vice-Gen-

eral Chairman from among its members and a Secretary to serve for two years, said service commencing with the date of election of the committee.

SEC. 7. The Vice-General Chairman shall assist the General Chairman and shall preside in his absence.

SEC. 8. Meetings of the Regional General Committee may be called by the General Chairman as occasion demands.

ARTICLE VII.

Regional Joint Committee.

Section 1. The Regional General Committee, together with an equal number of representatives appointed by the management, shall constitute the Regional Joint Committee.

SEC. 2. The officers of the committee shall consist of a Chairman and a Vice-Chairman, who shall be elected for terms of six months each. The election will be held at the regular meeting of the committee in July and January of each year and the Chairman and Vice-Chairman will take office immediately upon election.

SEC. 3. The office of the Chairman shall be filled alternately from the representatives of the management and the representatives of the employees. While the office of Chairman is being filled by the representative of the management, the office of Vice-Chairman shall be filled by a representative of the employees; likewise when the office of Chairman is being filled by a representative of the employees, the office of Vice-Chairman shall be filled by a representative of the management.

SEC. 4. Stated meetings of the Regional Joint Committee shall be held on the first Monday, bimonthly, throughout the year, commencing with the July meeting each year.

Sec. 5. Special meetings of the Regional Joint Committee may be called, by the Chairman, as occasion demands.

Sec. 6. The management and the employees will have equal voting power and not less than two-thirds vote will be necessary to reach a decision.

ARTICLE VIII.

Procedure for Adjustment.

Section 1. If an employee is not satisfied with the decision of his superior officer on any controversial matter, he may place same in the hands of the Local Committee of his craft, which is authorized to handle such matters on the Division on which the question arose.

Sec. 2. The Local Committee on a Division will arrange to handle the matter with the Division Superintendent, if said committee deems it proper.

Sec. 3. In the event that the Local Committee on a Division cannot effect a satisfactory settlement with the Division Superintendent, a joint submission will at once be prepared showing:

(1) Question at issue.

(2) Joint statement of agreed upon facts.

(3) Position of Local Committee.

(4) Position of Division Superintendent.

A copy of this joint submission shall be forwarded:

(*a*) By the Division Superintendent to the General Superintendent.

(*b*) By the Local Committee to the Regional General Committee.

Sec. 4. The Regional General Committee may handle matters coming from the Local Committees before the General Superintendents and, failing a satisfactory settlement, a joint submission will at once be prepared showing:

(1) Question at issue.
(2) Joint statement of agreed upon facts.
(3) Position of Regional General Committee.
(4) Position of General Superintendent.

A copy of this joint submission shall be forwarded by the General Superintendent to the General Manager.

Sec. 5. The Regional General Committee may handle matters not satisfactorily adjusted with the General Superintendents before the General Manager and, failing a satisfactory settlement, a joint submission will be at once prepared showing:

(1) Question at issue.
(2) Joint statement of agreed upon facts.
(3) Position of Regional General Committee.
(4) Position of General Manager.

A copy of this joint submission shall be forwarded to the Secretary of the Regional Joint Committee.

Sec. 6. The Regional Joint Committee shall handle matters coming from the Regional General Committee. In case a decision is not reached by the Regional Joint Committee not later than subsequent bi-monthly meeting at which the case was first brought up, further procedure will be had as determined upon at the time of such disagreement.

Article IX.

General.

Section 1. In all cases where a meeting of a committee is scheduled for a certain day and that day is a holiday, the day immediately following shall be substituted.

Sec. 2. Unless otherwise specified, terms of representatives and of all committee officers shall date from July 1st of each year.

Sec. 3. Matters may be referred to the various committees by officials of the company.

Sec. 4. It is understood and agreed that each

representative shall be free to discharge his duties in an independent manner without fear that his individual relations with the company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

Sec. 5. Representatives elected as of July, 1921, shall hold office until the election of 1923.

ARTICLE X.

Notice of Changes.

Section 1. The foregoing becomes effective August 18, 1921, and shall remain in full force and effect until after thirty days' notice has been given by either party to the other of a desire to change.

For the Management:
C. S. Krick,
General Manager,
Eastern Region,
Pennsylvania System.

For the Employes:
T. H. Davis,
Boilermaker,
General Chairman.

Wm. Donahue,
Blacksmith,
Vice General Chairman.
E. C. Arnold,
Sheet Metal Worker.
E. R. Snyder,
Carman.
I. R. Staats,
Electrical Worker.
John J. McBride,
Machinist.
Howard H. Emberger,
Boilermaker.

Regional General Committee representing Mechanics, Helpers and Apprentices, M. E. Dept., Eastern Region (excluding Hoboken Shops) Pennsylvania System.

PLAINTIFFS' EXHIBIT No. 10.

Copies of this Exhibit will be handed to the Court, with the printed Record.

PLAINTIFFS' EXHIBIT No. 11.

ENVELOPE.

[Printed on front as follows:]

R. R. S.

The Association of Shop Craft Employes of the Eastern Region, Pennsylvania Railroad System

NOTICE

Enclosed you will find three envelopes and a ballot. Fill out the ballot, detach at the dotted line, fold and place in envelope No. 1. Seal envelope No. 1, place in Envelope No. 2 and write your name, craft, location and division in space provided in the upper left hand corner.

Place envelope No. 2 in the stamped envelope and forward by United States Mail, to the Regional Joint Committee, Shop Craft Employes, Room 53, Broad Street Station, Philadelphia, Pa.

BOILERMAKERS, THEIR HELPERS AND APPRENTICES

[Inside of envelope appear one large stamped envelope, two small envelopes, and ballot, as follows:]

[Large envelope, addressed:]

To:

Regional Joint Committee, Shop Craft Employes
Room 53, Broad Street Station
Philadelphia, Pa.

[Small envelope:]

THE ASSOCIATION OF SHOP CRAFT EMPLOYES OF THE EASTERN REGION, PENNSYLVANIA RAILROAD SYSTEM

No. 1

OFFICIAL BALLOT

Put no marks of identification on this envelope.
Place your ballot in this envelope and seal it.
To be opened only by tellers appointed by Regional Joint Committee.

[Small envelope:]

This Envelope to be Opened
Only by Tellers of Election

The Association of Shop Craft Employes of the
Eastern Region, Pennsylvania Railroad System
Employe Voting:
Name .....
Craft ..... No. 2.
Location .....
Division .....

To TELLERS OF ELECTION

Use this envelope to enclose envelope No. 1, containing your Ballot, then place in stamped envelope and forward by United States mail.

[Ballot:]

OFFICIAL BALLOT FOR BOILERMAKERS, THEIR HELPERS AND APPRENTICES

THE ASSOCIATION OF SHOP CRAFT EMPLOYEES OF THE EASTERN REGION PENNSYLVANIA RAILROAD SYSTEM

Election of Representatives on the Middle Division
May 21, 1923.

Important Instructions! Read Carefully.

Indicate your preference by placing an (X) before the names of the candidates of your choice in the column provided for same.

Make no other mark or marks on this ballot.

VOTING BY BALLOT BOX

Voters voting by ballot boxes will detach ballot along perforated line, fold, and place in locked ballot box. These ballot boxes, together with Election Rolls, shall be forwarded by the various election Boards to

the Regional Joint Committee, Shop Craft Employes, Room 53, Broad Street Station, Philadelphia, Pa., not later than 11:59 P. M., Eastern Standard Time, Monday, May 21, 1923.

VOTING BY MAIL

Place ballot in small envelope No. 1 marked "Official Ballot" and seal it; then place this envelope in envelope No. 2 and seal it; write your name, craft and location in space provided in upper left-hand corner of envelope No. 2. Then place envelope No. 2 in stamped addressed envelope and mail it to the Regional Joint Committee, Shop Craft Employes, Room 53, Broad Street Station, Philadelphia, Pa., not later than 11:59 P. M., Eastern Standard Time, Monday, May 21, 1923.

Two (2) or more ballots in one (1) envelope, or two (2) or more ballots from any one (1) employee will not be counted.

This ballot is SECRET. Envelopes No. 2 will be checked against the poll list, removed and destroyed by the Tellers. Envelope No. 1 will then be opened and count made.

(Detach along this line)

Official Ballot For Boilermakers, Their Helpers and Apprentices.

THE ASSOCIATION OF SHOP CRAFT EMPLOYEES OF THE EASTERN REGION, PENNSYLVANIA RAILROAD SYSTEM

Election of Representatives on the Middle Division May 21, 1923.

Vote For 3. If this Number is Exceeded, The Ballot Shall be Void, According to Sections 7 and 8 of Article IV.

Mark (X) Here	Name	Craft	Location
( )	Delaney, G. B.	Boilermaker	E.H., Hollidaysburg, Pa.
( )	Kling, O. M.	Boilermaker	East Altoona, Pa.
( )	Sarouy, P. J.	Boilermaker	E. H. No. 3, Altoona, Pa.

PLAINTIFFS' EXHIBIT No. 12.

AGREEMENT
Between the
UNITED STATES RAILROAD ADMINISTRATION
and the
Employees Represented By The
RAILWAY EMPLOYEES DEPARTMENT
of the
AMERICAN FEDERATION OF LABOR
and its Affiliated Organizations of
the Mechanical Section and
Divisions Nos. 1, 2, and 3 thereof
(Director General of Railroads 1918.)
UNITED STATES RAILROAD ADMINISTRATION
Director General of Railroads.

Washington, September 20, 1919.

AGREEMENT

BETWEEN THE

Director General of Railroads in respect of the railroads in Federal operation and their employees represented by the Railway Employees' Department

of the American Federation of Labor and its affiliated organizations of the Mechanical Section and Divisions Nos. 1, 2, and 3 thereof—

1. International Association of Machinists;
2. International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America;
3. International Brotherhood of Blacksmiths and Helpers;
4. Amalgamated Sheet Metal Workers' International Alliance;
5. International Brotherhood of Electrical Workers;
6. Brotherhood Railway Carmen of America.

It is understood that this agreement shall apply to those who perform the work specified in this agreement in the maintenance of equipment, maintenance of way, signal maintenance, telegraph maintenance, and all other departments of all railroads in Federal operation, shop employees of American Railway Express, and Pullman Car Line employees having the same working conditions as specified in Supplement No. 4 to General Order No. 27.

It is understood that this agreement does not annul agreements already in effect with other organizations unless and until a majority of the employees concerned express a desire for a change.

GENERAL RULES.

Hours of service.

Rule 1. Eight hours shall constitute a day's work. All employees coming under the provisions of this schedule, except as provided for in rule 15, shall be paid on the hourly basis.

Rule 2. When one shift is employed, the starting

time shall be not earlier than 7 o'clock, and not later than 8 o'clock. The time and length of the lunch period shall be subject to mutual agreement.

Rule 3. Where two shifts are employed, the starting time of the first shift shall be governed by rule 2, and the second shift shall start immediately following the first shift, or at 8 p. m.

The spread of the second shift shall consist of 8 consecutive hours, including an allowance of 20 minutes for lunch within the limits of the fifth hour.

Rule 4. Where three shifts are employed, the starting time of the first shift shall be governed by rule 2, and the starting time for each following shift shall be regulated accordingly.

The spread of each shift shall consist of 8 consecutive hours, including an allowance of 20 minutes for lunch within the limits of the fifth hour.

Rule 5. The time established for commencing and quitting work for all men on each shift shall be the same at the respective points, but where three shifts are worked by running repair forces, and two shifts by back-shop forces, the quitting time of the first shift and the commencing and quitting time of the second shift of the back-shop forces will be governed by the provisions of rule 3.

EXCEPTION.

It is agreed that three 8-hour shifts may be established under the provisions of rule 4, for the employees necessary to the continuous operation of power houses, millwright gangs, heat-treating plants, train yard running repair and inspection forces (not repair tracks) without extending the provisions of rule 4 to the balance of the shop forces.

Rule 6. All overtime, except as the provisions of rules 7, 9, 10, and 15 apply, outside of bulletin hours,

up to and including the sixteenth hour of service in any one 24-hour period, computed from the starting time of the employee's regular shift, shall be paid for at the rate of time and one-half and thereafter at the rate of double time, up to the starting time of the employee's regular shift.

This to include work performed on Sundays, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas, and such State holdiays as are now recognized as punitive overtime days at the various points on the respective railroads within the different States.

Rule 7. For continuous service after regular working hours, employees will be paid 1 hour for 40 minutes' service or less, and shall not be required to work more than 1 hour without being permitted to go to meals.

Employees called or required to return to work will be allowed 5 hours for 3 hours and 20 minutes' service or less.

They shall be required to do only such work as held or called for.

Rule 8 Employees regularly assigned to work on Sundays or holidays, or those called to take the place of such employees, will be allowed to complete the balance of the day unless released at their own request. Those who are called will be advised as soon as possible after vacancies become known.

Rule 9. Employees required to work during lunch period shall receive pay for one hour straight time and be allowed necessary time to procure lunch without loss of time.

This does not apply where employees are allowed the 20 minutes for lunch without deduction therefor.

Rule 10. Employees, except as the provisions of

rules 12 and 15 apply, sent out on the road for emergency service, shall receive continuous time from the time called until their return as follows:

Overtime emergency service road work.

Overtime rates for all overtime hours and straight time for the recognized straight-time hours at home station, whether working, waiting, or traveling, except that after the first 24 hours, if relieved from duty and permitted to go to bed for 5 or more hours, they will not be allowed time for such hours, provided that in no case shall an employee be paid for less than 8 hours on week days, and 8 hours at one and one-half time for Sundays and recognized holidays, for each calendar day. Where meals and lodging are not provided by the railroad, actual expenses will be allowed Employees will receive all allowances for expenses not later than the time when they are paid for the service rendered. Employees will be called as nearly as possible one hour before leaving time, and on their return will deliver tools at point designated.

Distribution of overtime.

Rule 11. When it becomes necessary for employees to work overtime they shall not be paid off during regular working hours to equalize the time.

At points where sufficient number of employees are employed, employees shall not work two consecutive Sundays (holidays to be considered as Sundays).

Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally.

Temporary vacancies.

Rule 12. When necessary to fill temporary vacancies at outlying points employees, excluding those

specified in rules 14 and 15, will be sent out and will be paid for this service as follows:

Continuous time from time called up to time of reporting at point to which sent, overtime rates for all overtime hours, and straight time for the recognized straight-time hours at home station, whether waiting or traveling (the same provisions to apply for return trip). While at such point they will be paid straight time and overtime in accordance with practice at home point with a guarantee of not less than eight hours' pay, at the established rate, for each calendar day, including Sundays and holidays at overtime rates. Where meals and lodging are not provided by the railroad, actual expenses will be allowed.

Rules in existing agreements or shop rules covering the road services described in rules 10 and 12 which are more favorable to the employees are to be preserved.

Overtime changing shifts.

Rule 13. Employees changed from one shift to another will be paid overtime rates for the first shift of each change. Employees working two shifts or more on a new shift shall be considered transferred.

Overtime regular assigned road work.

Rule 14. Employees regularly assigned to road work whose tour of duty is regular, and who leave and return to home station daily (a boarding car to be considered a home station), shall be paid continuous time from time of leaving the home station to the time they return, whether working, waiting, or traveling, exclusive of the meal period, at straight time for the regular hours, and overtime rates for all overtime hours as per overtime rules.

The starting time to be not earlier than 6 a. m. nor

later than 8 a. m. Where two or more shifts are worked the starting time of each following shift will be regulated accordingly.

Rule 15. Employees regularly assigned to perform road work and paid on a monthly basis shall be paid not less than the minimum hourly rate established for the corresponding class of employees coming under the provisions of this schedule, on the basis of 365 eight-hour days per calendar year, with pay at the rate of time and one-half time for Sundays and holidays designated herein; otherwise, overtime will not be paid. Where meals and lodging are not furnished by the railroad, or when the service requirements make the purchase of meals and lodging necessary while away from home point, employees will be paid actual expenses. This service is distinct and separate from that performed by any other class of employees coming under the provisions of this schedule and is not to be confused therewith; the employees assigned to it shall not be assigned to or used to perform the construction, repair, and emergency work assigned to the other employees under the provisions of the general and special rules of this schedule.

Note.—The following is an example to be followed in arriving at the monthly rate:

	Hours.
365 days multiplied by 8 equals	2,920
59 Sundays and holidays at one-half time will be 59 multiplied by 4, equaling	236
Total hours to be paid for	3,156

The monthly salary is arrived at by dividing the total earnings of 3,156 hours by 12; no overtime is allowed for time worked in excess of eight hours per day; on the other hand, no time is to be deducted unless the employee lays off of his own accord.

Filling vacancies.

Rule 16. When an employee is required to fill the the place of another employee receiving a higher rate of pay he shall receive the higher rate; but if required to fill temporarily the place of another employee receiving a lower rate his rate will not be changed.

Rule 17. Employees serving on night shifts desiring day work shall have preference when vacancies occur, according to their seniority.

Rule 18. When new jobs are created or vacancies occur in the respective crafts the oldest employees in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. All vacancies or new jobs created will be bulletined. Bulletins must be posted five days before vacancies or filled permanently. Employees desiring to avail themselves of this rule will make application to the official in charge and a copy of the application will be given to the local chairman.

Rule 19. Mechanics in services will be considered for promotion to positions as foremen.

When vacancies occur in positions of gang foremen, men from the respective crafts will have preference in promotion.

Rule 20. Employees transferred from one point to another, with a view of accepting a permanent transfer, will, after 30 days, lose their seniority at the point they left, and their seniority at the point to which transferred will begin on date of transfer, seniority to govern. Employees will not be compelled to accept a permanent transfer to another point.

Absence from work.

Rule 21. When the requirements of the service will permit, employees, on request, will be granted leave

of absence for a limited time, with privilege of renewal. An employee absent on leave who engages in other employment will lose his seniority unless special provisions shall have been made therefor by the proper official and committee representing his craft.

The arbitrary refusal of a reasonable amount of leave of employees when they can be spared, or failure to handle promptly cases involving sickness or business matters of serious importance to the employee, is an improper practice and may be handled as unjust treatment under this agreement.

Rule 22. In case an employee is unavoidably kept from work he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible.

Faithful service.

Rule 23. Employees who have given long and faithful service in the employ of the company and who have become unable to handle heavy work to advantage, will be given preference of such light work in their line as they are able to handle.

Attending Court.

Rule 24. When attending court as witnesses for the railroad, employees will receive pay for all time lost at home station, with a minimum of eight hours' time each week day and eight hours at rate and one-half for Sundays and holidays, either at home station, away from home, or traveling. Time and one-half will be paid for traveling during overtime hours where employees are unable to secure sleeping-car accommodation. Actual expenses will be allowed when away from home station, and necessary expenses will be allowed when at home. When necessary, the company

will furnish transportation and will be entitled to certificate for witness fees in all cases.

Paying off.

Rule 25. Employees will be paid off during their regular working hours, semi-monthly, except where existing State laws provide a more desirable paying-off condition.

Should the regular pay day fall on a holiday or days when the shops are closed down, men will be paid on the preceding day.

Where there is a shortage equal to one day's pay or more in the pay of an employee, a voucher will be issued to cover the shortage.

Employees leaving the service of the company will be furnished with a time voucher covering all time due within 24 hours where D. C. checks are issued and within 48 hours at other points, or earlier when possible.

Rule 26. During inclement weather provision will be made where buildings are available to pay employees under shelter.

Reduction of forces.

Rule 27. When it becomes necessary to reduce expenses, the force at any point or in any department or subdivision thereof shall be reduced, seniority as per rule 31 to govern; the men affected to take the rate of the job to which they are assigned.

Five days' notice will be given men affected before reduction is made, and lists will be furnished local committee.

In the restoration of forces, senior laid-off men will be given preference of re-employment, if available, within a reasonable time, and shall be returned to their former position; local committee will be furnished list

of men to be restored to service; in reducing force the ratio of apprentices will be maintained.

Rule 28. Employees laid off on account of reduction in force, who desire to seek employment elsewhere, will, upon application, be furnished with a pass to any point desired on the same railroad.

Rule 29. When reducing forces, if men are needed at any other point they will be given preference to transfer to nearest point, with privilege of returning to home station when force is increased, such transfer to be made without expense to the company. Seniority to govern all cases.

Rule 30. Employees required to work when shops are closed down, due to breakdown in machinery, floods, fires, and the like, will receive straight time for regular hours, and overtime for overtime hours.

Seniority.

Rule 31. Seniority of employees in each craft covered by this agreement shall be confined to the point employed in each of the following departments:

Maintenance of way (bridge and building, where separate from maintenance of way department).

Maintenance of equipment.

Maintenance of telegraph.

Maintenance of signals.

Four subdivisions of the carmen, as follows:

Pattern makers.

Upholsterers.

Painters.

Other carmen.

The seniority lists will be open to inspection and copy furnished the committee.

Assignment of work.

Rule 32. None but mechanics or apprentices regu-

larly employed as such shall do mechanic's work as per special rules of each craft, except foremen at points where no mechanics are employed.

Rule 33. In compliance with the special rules included in this agreement, none but mechanics and their apprentices in their respective crafts shall operate oxyacetylene, thermit, or electric welders; where oxyacetylene or other welding processes are used, each craft shall perform the work which was generally recognized as work belonging to that craft prior to the introduction of such processes, except the use of the cutting torch when engaged in wrecking service.

Foremanship, filling temporarily.

Rule 34. Should an employee be assigned temporarily to fill the place of a foreman, he will be paid his own rate, straight time for straight-time hours and overtime for overtime hours, if greater than the foreman's rate. If it is not, he will get the foreman's rate. Said positions shall be filled only by mechanics of the respective craft in their departments.

Grievances.

Rule 35. Should any employee subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be taken to the foreman, general foreman, master mechanic, or shop superintendent, each in their respective order, by the duly authorized local committee or their representative.

If stenographic report of investigation is taken, the committee shall be furnished a copy.

If the result still be unsatisfactory, the duly authorized general committee, or their representatives, shall have the right of appeal, preferably in writing, to the higher officials designated to handle such matters in their respective order, and conference will be granted within 10 days of application.

All conferences between local officials and local committees to be held during regular working hours without loss of time to committeemen.

Rule 36. Should the highest designated railroad official or his duly authorized representative and the duly authorized representative of the employees fail to agree, the case shall then be jointly submitted in writing to the chief executive officer of the railroad and the chief executive officer of the Railway Employee's Department of the American Federation of Labor for adjudication or final disposition. The methods of procedure will be those prescribed by the Railroad Administration. To the extent that these rules may remain in force after the expiration of Federal operation, the methods of procedure will thereafter be such as may be agreed to by the representatives of the railroads and the representatives of the organizations herein specified. Prior to the assertion of grievances as herein provided, and while questions of grievances are pending, there will neither be a shut down by the employer nor a suspension of work by the employees.

Rule 37. An employee who has been in the service of the railroad 30 days shall not be dismissed for incompetency, neither shall an employee be discharged for any cause without first being given an investigation.

Rule 38. If it is found that an employee has been unjustly discharged or dealt with such employee shall be reinstated with full pay for all time lost.

Committees.

Rule 39. The company will not discriminate against any committeemen who, from time to time, represent other employees, and will grant them leave of absence and free transportation when delegated to represent other employees.

Apprentices.

Rule 40. All apprentices must be able to speak, read, and write the English language and understand at least the first four rules of arithmetic.

Applicants for regular apprenticeship shall be between 16 and 21 years of age, and, if accepted, shall serve four years of 290 days each calendar year. If retained in the service at the expiration of their apprenticeship they shall be paid not less than the maximum rate established for journeymen mechanics of their respective crafts.

In selecting helper apprentices seniority will govern and all selections will be made in conjunction with the respective craft shop committees.

Note.—See special rules of each craft for additional apprentice rules.

Rule 41. All apprentices must be indentured and shall be furnished with a duplicate of indenture by the company, who will also furnish every opportunity possible for the apprentice to secure a complete knowledge of the trade.

No apprentice will be started at points where there are not adequate facilities for learning the trade.

Rule 40 shall govern in the employment of apprentices.

FORM OF INDENTURE.

This will certify that ..... was employed as a .....apprentice by the .....Railroad, at ....., on ....., 19...., to serve four years, a minimum of 290 days each.

.....
(Title of officer in charge.)

SERVICE PERFORMED DURING APPRENTICESHIP.

.....
.....
.....
.....
.....

This will certify that on ..... 19...., ... completed the course of apprenticeship specified above and is entitled, if employed by the ..... Railroad, to the rates of pay and conditions of service of .....

(Title of officer in charge.)

.....

Note.—The above form is to be used both for regular and helper apprentices. (Helper apprentices to serve three years.)

Rule 42. The ratio of apprentices in their respective crafts shall not be more than one to every five mechanics.

Two apprentices will not be worked together as partners.

The distribution of apprentices among shops where general repairs are made on the division shall be as nearly as possible in proportion to the mechanics in the respective trades employed therein.

In computing the number of apprentices that may be employed in a trade on a division the total number of mechanics of that trade employed on the division will be considered.

If within six months an apprentice shows no aptitude to learn the trade he will not be retained as an apprentice.

An apprentice shall not be dismissed or leave the

service of his own accord, except for just and sufficient cause, before completing his apprenticeship.

Apprentices shall not be assigned to work on night shifts. An apprentice shall not be allowed to work overtime during the first three years of his apprenticeship.

If an apprentice is retained in the service upon completing the apprenticeship, his seniority rights as a mechanic will date from the time of completion of apprenticeship.

Preference will be given to sons of employees in the selection of apprentices to the extent of at least 80 per cent. of the number employed.

Rule 43. The rate for all mechanics who were receiving 68 cents per hour or more under Supplement 4 to General Order 27, except those provided for in rule 45, will be increased 4 cents per hour, effective May 1, 1919.

Steel-car workers and other mechanics in the car department who were receiving the rate of 63 cents per hour under Supplement 4 to General Order 27 will be increased 4 cents per hour, effective May 1, 1919.
Rates of pay.

Other mechanics in the car department who were receiving 58 cents per hour under Supplement 4 to General Order 27 will be increased 9 cents per hour, making a rate of 67 cents per hour, effective May 1, 1919.

Rule 44. Apprentices, helpers, and other classes of workmen covered by Supplement 4 to General Order 27, except those provided for in rule 45, will be increased 4 cents per hour above the present rate, effective May 1, 1919. This increase to apply also to men paid on the step rates provided for in section 2 and 2a of article 2, Supplement 4 to General Order 27,

except those provided for in rule 45, effective May 1, 1919.

Rule 45. Linemen and others covered by rule 141 shall receive 68 cents per hour, effective May 1, 1919.

Groundmen covered by rule 142 shall receive 62 cents per hour, effective May 1, 1919.

Coal-pier elevator operators and coal-pier electric-hoist operators as covered by rule 143 shall receive 55 cents per hour, effective May 1, 1919.

Applicants for employment.

Rule 46. Applicants for employment will be required to make statement only as to their ability and address of relatives, except when their duties require them to distinguish signals or do flagging, when they shall be required to pass the usual eyesight and hearing tests.

Conditions of shops, etc.

Rule 47. Good drinking water and ice will be furnished. Sanitary drinking fountains will be provided where necessary. Pits and floors, lockers, toilets, and wash rooms will be kept in good repair and in a clean, dry, and sanitary condition.

Shops, locker rooms and wash rooms will be lighted and heated in the best manner possible consistent with the source of heat and light available at the point in question.

Personal injuries.

Rule 48. Employees injured while at work will not be required to make accident reports before they are given medical attention, but will make them as soon as practicable thereafter. Proper medical attention will be given at the earliest possible moment, and employees shall be permitted to return to work

without signing a release pending final settlement of the case.

At the option of the employee, personal-injury settlements may be handled under the provisions of rules 35 and 36. Where death or permanent disability results from injury the lawful heirs of the deceased may have the case handled as herein provided.

Notices.

Rule 49. A place will be provided inside all shops and roundhouses where proper notices of interest to employees may be posted.

Shop trains.

Rule 50. Existing conditions in regard to shop trains will be maintained unless changed by mutual agreement. The company will endeavor to keep shop trains on schedule time, properly heated and lighted, and in a safe, clean, and sanitary condition. This not to apply to temporary service provided in case of emergency.

Free transportation.

Rule 51. Employees covered by this agreement and those dependent upon them for support will be given the same consideration in granting free transportation as is granted other employees in service.

General committees representing employees covered by this agreement to be granted same consideration as is granted general committees representing employees in other branches of the service.

Protection to employees.

Rule 52. Employees will not be required to work on engines or cars outside of shops during inclement weather, if shop room and pits are available. This does not apply to work in engine cabs or emergency

work on engines or cars set out for or attached to trains.

Should it become necessary to establish a regular night shift in shops, such men will not be used on running repair work unless work is brought to shop.

When it is necessary to make repairs to engines, boilers, tanks, and tank cars, such parts shall be cleaned before mechanics are required to work on same. This will also apply to cars undergoing general repairs.

Employees will not be assigned to jobs where they will be exposed to sand blast and paint blowers while in operation.

All acetylene or electric welding or cutting will be protected by a suitable screen when its use is required.

Emery wheels and grindstones.

Rule 53. Emery wheels and grindstones will be installed at convenient places in the shop and will be kept true and in order.

Help to be furnished.

Rule 54. Craftsmen and apprentices will be furnished sufficient competent help, when needed to handle the work, if available. When experienced helpers are available, they will be employed in preference to inexperienced men.

Laborers when used as helpers will be paid the helpers' rate.

Miscellaneous.

Rule 55. When dismantling or scraping engines, boilers, tanks, cars (except wood cars), or other machinery, this work will be done by mechanics of their respective crafts. Sufficient help will be furnished.

When wood cars are dismantled for scrapping,

parts to be removed before car is burned or destroyed will be removed by carmen.

Rule 56. No employee will be required to work under a locomotive or car without being protected by proper signals. Where the nature of the work to be done requires it, locomotives or passenger cars will be placed over a pit, if available.

Rule 57. In shops and roundhouses not now equipped with connections for taking the steam from engines, arrangements will be made to equip them so that steam from locomotives will not be blown off inside the house.

Rule 58. All engines will be placed under smoke jacks in roundhouses where practicable, when being fired up.

Rule 59. At shops and roundhouses equipped with electricity, electric light globes and extensions will be kept in tool rooms available for use.

Rule 60. When employees are required to check in and out on their own time, they will be paid one hour extra at the close of each week, regardless of the number of hours worked during the week.

MACHINISTS' SPECIAL RULES.

Qualifications.

Rule 61. Any man who has served an apprenticeship or has had four years' experience at the machinists' trade and who, by his skill and experience, is qualified and capable of laying out and fitting together the metal parts of any machine or locomotive, with or without drawings, and competent to do either sizing, shaping, turning, boring, planing, grinding, finishing, or adjusting the metal parts of any machine or locomotive whatsoever shall constitute a machinist.

Classification of work.

Rule 62. Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling, and grinding of metals used in building, assembling, maintaining, dismantling, and installing locomotives and engines (operated by steam or other power), pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting, and other shop machinery; ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding, axle truing, axle, wheel, and tire turning and boring; engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting, and breaking of all joints on superheaters; oxyacetylene, thermit, and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus, and all other work generally recognized as machinists' work.

Machinist apprentices.

Rule 63. Include regular and helper apprentices in connection with the work defined by rule 62.

Machinist helpers.

Rule 64. Employees assigned to help machinists and apprentices, operators of drill presses and bolt threaders not equipped with a facing, boring or turning head or milling apparatus, bolt pointing and centering machines, wheel presses, bolt threaders, nut tappers and facers; crane men helpers, tool-room attendants, machinery oilers, box packers, grease-cup fillers and oilers, and applying all couplings between engine and tenders; locomotive tender and draft rigging work except when performed by carmen.

Assignment to running repairs.

Rule 65. Machinists assigned to running repairs shall not be required to work on dead work at points where deadwork forces are maintained.

Dead work:

Rule 66. Dead work means all work on an engine which can not be handled within 24 hours by the regularly assigned running repair forces maintained at point where the question arises.

Dead work and running repair forces.

Rule 67. Dead-work forces will not be assigned to perform running repair work, except when the regularly assigned running repair forces are unable to get engines out in time to prevent delay to train movement.

Work at wrecks.

Rule 68. In case of wrecks where engines are disabled, machinists and helper (more if necessary) shall accompany the wrecker. They will work under the direction of the wreck foreman.

Apprentices' classification of work.

Rule 69. Apprentices shall be instructed in all branches of the machinists' trade. They will serve three years on machines and special jobs. Apprentices will not be required to work more than four months on any one machine or special job. During the last year of their apprenticeship they will work on the floor. Apprentices shall not work on oxyacetylene, thermit, electric, or other welding processes until they are in their last year.

Helper apprentices.

Rule 70. Helpers who have had not less than two consecutive years' experience as machinist helper at

the point where employed, at the time application for apprenticeship is made, may become a helper apprentice. When assigned as a helper apprentice they must not be over 25 years of age.

Rule 71. Helper apprentices shall serve three years, a minimum of 290 days each calendar year, and shall be governed by the same laws and rules as govern regular apprentices.

Rule 72. The number of helper apprentices must not at any time exceed 50 per cent of the combined number of regular and helper apprentices assigned.

Rule 73. Helper apprentices shall receive the minimum helper rate for the first six months, with an increase of 2 cents per hour for every six months thereafter until they have served three years.

Helpers.

Rule 74. Helpers, when used in any way in connection with machinists' work, shall in all cases work under the orders of the machinist, both under the direction of the foreman.

Rule 75. When vacancies occur under classification of machinist helper (temporarily or permanent) machinist helpers in the service will be given preference in promotion to position paying either same or higher rate at station employed, seniority to govern.

Rule 76. Laborers, or similar class of workmen, shall not be permitted to do helpers' work as outlined in rule 64 if regular machinist helpers are available.

Differentials for machinists.

Rule 77. Machinists required to inspect locomotives and swear to reports required by the Federal locomotive inspection law shall receive 5 cents per hour above the minimum rate paid machinists at the point employed.

Autogenous welders shall receive 5 cents per hour above the minimum rate paid machinists at the point employed.

BOILERMAKERS' SPECIAL RULES.

Qualifications.

Rule 78. Any man who has served an apprenticeship, or has had four years' experience at the trade, who can with the aid of tools, with or without drawings, and is competent to either lay out, build or repair boilers, tanks, and details thereof, and complete same in a mechanical manner shall constitute a boilermaker.

Classification of work.

Rule 79. Boilermakers' work shall consist of laying out, cutting apart, building, or repairing boilers, tanks, and drums; inspecting, patching, riveting, chipping, caulking, flanging, and flue work; building, repairing, removing, and applying steel cabs and running boards; laying out and fitting up any sheet iron or sheet steel work made of 16-gauge or heavier (present practice between boilermakers and sheet-metal workers on railroads to continue relative to gauge of iron), including fronts and doors; grate and grate rigging, ash pans, front end netting and diaphragm work; engine tender steel underframe and steel tender truck frames, except where other mechanics perform this work; removing and applying all staybolts, radials, flexible caps, sleeves, crown bolts, stay rods, and braces in boilers, tanks, and drums, applying and removing arch pipes; operating punches and shears for shaping and forming, pneumatic staybolt breakers, air rams, and hammers; bull, jam, and yoke riveters; boilermakers' work in connection with the building and repairing of steam shovels, derricks, booms, housing, cir-

cles, and coal buggies; I-beam, channel iron, angle iron, and tee iron work; all drilling, cutting, and tapping, and operating rolls in connection with boilermakers' work; oxyacetylene, thermit, and electric welding on work generally recognized as boilermakers' work, and all other work generally recognized as boilermakers' work. It is understood that present practice in the performance of work between boilermakers and carmen will continue.

Boilermaker apprentices.

Rule 80. Include regular and helper apprentices in connection with the work as defined by rule 79.

Boilermaker helpers.

Rule 81. Employees assigned to help boilermakers and their apprentices, operators of drill presses, and bolt cutters in the boiler shop, boiler washers, punch and shear operators (cutting only bar stock and scrap).

Running repair work.

Rule 82. Running repair work for boilermakers shall consist of such boilermakers' work as is necessary to fit locomotive to make a successful trip. It shall include staybolt inspection, ordinary repairs to ash pan and front end nettings, calking and repairing leaks in fireboxes and exterior or boiler or tanks. The application of staybolts, patches, and flues, will be done by dead-work forces, but at points where no dead-work forces are employed, the round-house men will be expected to do such work as will be necessary to fit engine to return to main terminal.

Special services.

Rule 83. Flange turners, layer outs and fitter ups shall be assigned in shops where flue sheets and half side sheets or fireboxes are flanged, removed, and ap-

plied. One man may perform all these operations where the service does not require more than one man.

Boiler inspectors—staybolt inspections will be assigned at all points where monthly staybolts and boiler inspection of 15 or more engines is required. When such employees have no inspection work to perform, they may be assigned to other boilermakers' work.

Protection for employees.

Rule 84. Boilermakers, apprentices, and helpers will not be required to work on boilers or tanks while electric or other welding processes are in use or when tires are being heated, unless proper protection is provided.

Rule 85. Not more than one oxyacetylene welding or cutting operator or electric operator will be required to work in firebox or shell of boiler at the same time, unless proper protection is provided.

Rule 86. Oxyacetylene welding or cutting operator or electric operator will be furnished with helper when necessary or when, in the opinion of the operator, it is essential for personal safety.

Rule 87. Should it become necessary to send oxyacetylene welder or cutter or electric operator out of the shop in cold weather, he will be given ample time to dry off before being sent out.

Rule 88. When it is necessary to renew, remove, or replace flue, door, side, or crown sheets by means of oxyacetylene or other cutting and welding processes, such portion of the ash-pan wings and grates as interfere with the operator, will be removed. Dome caps will be removed and front ends opened up if required, for proper ventilation.

Rule 89. Boilers will have steam blown off and be sufficiently cooled before boilermakers or appren-

tices are required to work in them; blowers will be furnished when possible to do so.

Fireboxes, front ends, and ash pans will be properly cleaned out before boilermakers or apprentices are required to work in them.

Front ends and fire boxes of engines held in for other than running repairs will be washed out before boilermakers or apprentices are required to work in them. Fire brick interfering with the work to be performed will be removed.

Rule 90. Two boilermakers, or one boilermaker and a competent apprentice with at least two years' experience will be used to operate a long-stroke hammer; that is, an air hammer capable of driving staybolts or rivets five-eighths inch diameter or larger, or of expanding flues or tubes. Double-gun work will not be permitted.

When rolling or expanding superheater flues, two boilermakers, or one boilermaker and a competent apprentice with at least two years' experience, will be used.

Rule 91. No tapping or reaming will be done in fireboxes when same is near enough to endanger the men working on inside of fire box. A space of 10 rows of staylolts will be considered sufficient, it being understood that the helper will protect the men with a sleeve over a tap when tapping is being done.

Furnishing help.

Rule 92. Boilermakers engaged on running repair work will be furnished a helper when necessary, or when it is essential for personal safety.

Rule 93. Boilermakers sent out on the road to do boilermakers' work will be accompanied by helper when such work requires a helper at home points.

Removal of flues.

Rule 94. When flues (other than burst flues) are to be removed, the front end will be opened and such parts of the draft appliances as interfere with the boilermaker will be removed. Center arch pipes in engine, other than those equipped with combustion chambers, which interfere with boilermakers in the performance of their work will be removed.

Helpers on flange fires.

Rule 95. Sufficient competent help will be furnished on flange fires.

Rule 96. Helpers on flange fires will not be asked to go outside of shop to handle fuel during cold wealther.

Rule 97. Helpers while engaged on flange fires will not be requested to do other work than that in connection with flanging, and, as far as practicable, regularly assigned men will be used on flange fires.

Helpers.

Rule 98. There will be two helpers used in helping a boilermaker or an apprentice in breaking down 10 or more staybolts with a hand ram.

Rule 99. Classified boilermaker helpers will attend tool room in boiler shop.

Rule 100. Holding on all staybolts and rivets, striking chisel bars, side sets, and backing out, punches, scaling boilers, and heating rivets (except when performed by apprentices) will be considered boilermaker helpers' fork.

Rule 101. When rivets larger than five-eighths inch are to be cut off or backed out, sufficient help will be furnished.

Rule 102. Boilermakers or apprentices, when using compound motors, will be furnished sufficient competent help.

Rule 103. Two helpers will be furnished, when holding on rivets, with wedge bars.

Rule 104. Helpers will do all other work generally recognized as boilermaker helpers' work.

Helper apprentices.

Rule 105. Fifty per cent. of the apprentices may consist of boilermaker helpers who have had not less than two consecutive years' experience as boilermaker helper at the point where employed at the time application for apprenticeship is made.

They shall be between the ages of 21 and 40 years and shall serve three years, a minimum of 290 days each calendar year.

Helper apprentices shall be governed by the same laws and rules as regular apprentices.

Apprentices shall not work on oxyacetylene, thermit, electric, or other welding processes until they are in their last year.

They shall receive the minimum helpers' rate for the first six months, with an increase of 2 cents per hour for every six months thereafter until they have served their apprenticeship.

Schedule of work, regular apprentices.

Rule 106. The following schedule for regular apprentices showing the division of time on the various classes of work is designed as a guide and will be followed as closely as the conditions will permit:

Six months—Heating rivets and helping boilermakers.

Six months—Tank repairing and sheet-iron work.

Six months—Rolling flues; ash-pan work.

Six months—Staybolts and setting flues.

Fifteen months—General boiler work.

Three months—Electric or oxyacetylene welding.

Six months—Laying out and flanging.

Rule 107. The following schedule for helper apprentices showing the division of time on the various classes of work is designed as a guide and will be followed as closely as the conditions will permit:

Six months—Tank repairing and sheet-iron work.
Six months—Rolling flues; ash-pan work.
Six months—Staybolts and setting flues.
Nine months—General boiler work.
Three months—Electric or oxyacetylene welding.
Six months—Laying out and flanging.

Differentials for boilermakers.

Rule 108. Boilermakers assigned as boiler inspectors, also flangers, layers out, and autogenous welders shall receive 5 cents per hour above the minimum rate paid boilermakers at the point employed.

Rule 109. Helpers on flange fire shall receive 5 cents per hour above the helpers' rate at point employed.

BLACKSMITHS' SPECIAL RULES.

Qualifications.

Rule 110. Any man who has served an apprenticeship or who has had four years, varied experience at blacksmiths' trade shall be considered a blacksmith. He must be able to take a piece of work pertaining to his class and, with or without the aid of drawings, bring it to a successful completion within a reasonable length of time.

Classification of work.

Rule 111. Blacksmiths' work shall consist of welding, forging, heating, shaping, and bending of metal; tool dressing and tempering, spring making, tempering and repairing, potashing, case and bichloride hardening; flue welding under blacksmith fore-

man; operating furnaces, bulldozers, forging machines, drop-forging machines, bolt machines, and Bradley hammers; hammersmiths, drap hammermen, trimmers, rolling mill operators; operating punches and shears doing shaping and forming in connection with blacksmiths' work; oxyacetylene, thermit, and electric welding on work generally recognized as blacksmiths' work, and all other work generally recognized as blacksmiths' work.

Blacksmith apprentices.

Rule 112. Include regular and helper apprentices in connection with work as defined by rule 111.

Blacksmith helpers.

Rule 113. Employees assigned to helping blacksmiths and apprentices; heaters, hammer operators, machine helpers, drill press, and boltcutter operators, punch and shear operators (cutting only bar stock and scrap) in connection with blacksmiths' work.

Helper apprentices.

Rule 114. Fifty per cent. of the apprentices may consist of helpers who have had not less than two consecutive years' experience in shop on the division where advanced.

Seniority shall prevail in the selection of helper apprentices; those selected to be not over 30 years of age.

Apprentices selected from helpers shall serve three years, a minimum of 290 days each calendar year. When started as an apprentice they shall receive the minimum helper's rate of pay for the first six months; at the end of that time they shall receive 2 cents per hour increase and 2 cents per hour increase each succeeding six months while serving their apprenticeship.

Helper apprentices shall be governed by the same laws and rules as regular apprentices.

If after the first three months they show no aptitude to learn the trade, they shall be set back to helping and retain their former seniority as a helper. After completing their apprenticeship they shall receive prevailing rate paid blacksmiths if retained in the service.

Apprentices, miscellaneous.

Rule 115. Apprentices shall be given an opportunity to learn all branches of the trade and will not be kept on any one class of work longer than four months. Apprentices shall not work on oxyacetylene, thermit, electric, or other welding processes until they are in their last year.

Rates to be maintained.

Rules 116. A rate established on a certain class of work shall remain the same, and the men placed on such work shall receive such rate.

Helpers building fires.

Rule 117. Blacksmith helpers required to prepare furnaces or build fires on their own time will be allowed 30 minutes' straight time for each fire built or furnace prepared.

Running repair work.

Rule 118. Regularly assigned blacksmiths and helpers engaged on running repair work located at engine houses will work the same hours as other crafts in enginehouses.

Furnace operators and heaters.

Rule 119. Furnace operators (heaters) will be assigned to operate furnaces making or working material 6 inches or over and heating it for forgemen.

Heaters will be assigned to operate furnaces used in connection with forging machines 4 inches and over or to heat any material 4 inches and over to be forged.

Heaters will also be assigned to heavy fires.

When operators are required on other furnaces, helpers will be used.

Coal and oil to be furnished.

Rule 120. Coal and oil suitable for smithing purposes will be furnished at all times.

Hammer drivers.

Rule 121. Competent stem-hammer drivers will be furnished.

Road work.

Rule 122. Blacksmith sent out on the road to do blacksmiths' work will be accompanied by helper.

Helpers.

Rule 123. Helpers will do all other work generally recognized as blacksmith helpers' work.

Differentials for blacksmiths.

Rule 124. Blacksmiths working or making material 6 inches or over shall be classified as hammersmiths and shall receive 10 cents per hour above the minimum rate paid blacksmiths at the point employed.

Blacksmiths working material 4 inches or over shall be classified as heavy-fire blacksmiths and shall receive 5 cents per hour above the minimum rate paid blacksmiths at the point employed.

Heaters on heavy fires shall receive 10 cents per hour above the minimum rate paid helpers at point employed.

Hammer operators and helpers working with hammersmiths or heavy-fire blacksmiths shall receive 5 cents per hour above the minimum rate paid helpers at the point employed.

Furnace operators (heaters) operating furnaces for hammersmiths shall receive the minimum rate paid blacksmiths at the point employed.

Autogenous welders shall receive 5 cents per hour above the minimum rate paid blacksmiths at the point employed.

SHEET METAL WORKERS' SPECIAL RULES.

Qualifications.

Rule 125. Any man who has served an apprenticeship, or has had four or more years' experience at the various branches of the trade, who is qualified and capable of doing sheet metal work or pipe work as applied to buildings, machinery, locomotives, cars, etc., whether it be tin, sheet iron, or sheet copper, and capable of bending, fitting, and brazing of pipe, shall constitute a sheet metal worker.

Classification of work.

Rule 126. Sheet metal workers shall include tinners, coppersmiths and pipe fitters employed in shop yards and buildings and on passenger coaches and engines of all kinds, skilled in the building, erecting, assembling, installing, dismantling, and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter (present practice between sheet metal workers and boiler makers on railroads to continue relative to gauge of iron), including brazing, soldering, tinning, leading, and babbitting the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil, and steam pipes; the operation of babbitt fires and pipe-threading machines; oxyacetylene, thermit, and electric welding on work generally recognized as sheet metal workers'

work, and all other work generally recognized as sheet metal workers' work.

Sheet metal worker apprentices.

Rule 127. Include regular and helper apprentices in connection with the work as defined by rule 126.

Sheet metal worker helpers.

Rule 128. Employees regularly assigned as helpers to assist sheet metal workers and apprentices in their various classifications of work.

Protection for employees.

Rule 129. Sheet metal workers shall not be required to remove or apply blow-off or surface pipes or ash-pan blowers on boilers under steam.

Road work.

Rule 130. Sheet metal workers will be sent out on line of road and to outlying points, when their services are required, but not for small, unimportant running repair jobs.

Assignment of running repair force to dead work.

Rule 131. The assignment of running repair sheet metal workers to dead work, shall not be the recognized practice; but at points where no dead work sheet metal workers are employed, they may be so assigned if the needs of the service require it.

Assignment of dead-work force to running repairs.

Rule 132. Dead-work forces will not be assigned to perform running repaid work, except when the regularly assigned running repair forces are unable to get engines out in time to prevent delay to train movement.

Miscellaneous.

Rule 133. Sheet metal workers will not be assigned to work not applicable to them, except in emergency cases.

Helper apprentices.

Rule 134. Fifty per cent. of the apprentices may be selected from helpers of this craft who have had not less than two consecutive years' experience as a sheet metal worker helper at the point where employed, and shall not be more than 30 years of age; such apprentice shall serve three calendar years, a minimum of 290 days each calendar year, seniority to govern.

Rule 135. Helper apprentices will start at the third classification of regular apprentices' schedule when entering their apprenticeship, and continue through as regular apprentices. Helper apprentices will receive the minimum helpers' rate for the first six months, with an increase of 2 cents per hour for every six months thereafter until they have served three years.

Helpers.

Rule 136. Laborers or similar class of workmen shall not be permitted to do helpers' work as outlined in rule 128 if regular sheet metal worker helpers are available.

Apprentice schedule of work.

Rule 137. Regular apprentices' schedule and division of time:

6 months—helping.
6 months—light pipe work.
12 months—tinning, babbitting and brazing, laying out and forming.
12 months—engine and car work.
12 months—general work, including one month's experience with the oxyacetylene torch.

Differentials for sheet-metal workers.

Rule 138. Autogenous welders shall receive 5 cents per hour above the minimum rate paid sheet metal workers at point employed.

ELECTRICAL WORKERS' SPECIAL RULES.

Qualifications.

Rule 139. Any man who has served an apprenticeship or who has had four years' practical experience in electrical work and is competent to execute same to a successful conc'usion will be rated as an electrical worker.

An electrician will not necessarily be an armature winder.

Classification of electricians.

Rule 140. Electricians' work shall consist of repairing, rebuilding, installing, inspecting, and maintaining the electric wiring of generators, switchboards, motors and control, rheostats and control, static and rotary transformers, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, and axle-lighting equipment; winding armatures, fields, magnet coils, rotors, transformers, and starting compensators. Inside wiring in shops and on steam and electric locomotives, passenger train and motor cars; include cable splicers, wiremen, armature winders, electric crane operators for cranes of 40-ton capacity or over, and all other work properly recognized as electricians' work.

Classification of linemen, etc.

Rule 141. Linemen's work shall consist of building, repairing and maintaining pole lines and supports for service wires and cables, catenary and monorail conductors and feed wires, overhead and underground, and all outside wiring in yards.

Signal maintainers who, for 50 per cent. or more of their time, perform work as defined in Rules 140 and 141 of this agreement.

Men employed as motor attendants, generator at-

tendants, and substation attendants who start, stop, and oil and keep their equipment clean and change and adjust brushes for the proper running of their equipment, switchboard operators, coal pier car dumpers and coal pier conveyor car operators in connection with loading and unloading vessels.

Electric crane operators for cranes of less than 40-ton capacity.

Classification of groundmen, etc.

Rule 142. Groundmen's work shall consist of assisting linemen in their duties when said work is performed on the ground.

Rule 143. Coal pier elevator operators and coal pier electric hoist operators in connection with loading and unloading vessels.

Apprentice electrical workers.

Rule 144. Include regular and helper apprentices in connection with electrical workers.

Electrical worker helpers.

Rule 145. Employees regularly assigned as helpers to assist electrical workers and apprentices, including electric lamp trimmers who do no mechanical work.

Helper apprentices.

Rule 146. Fifty per cent. of the apprentices may consist of electrical workers' helpers who have had two years continuous service at the point where employed. When assigned as helper apprentices, they must not be over 25 years of age, and shall serve three years, a minimum of 290 days each calendar year.

Regular apprentice schedule of work.

Rule 147. The following schedule for regular apprentices, showing the division of time on the various

classes of work, is designed as a guide and will be followed as closely as possible;

12 months—Inside wiring and electrical repairing.
6 months—Outside line work.
6 months—Locomotive headlight work.
6 months—Car lighting department.
6 months—Armature winding.
12 months—General electrical work.

Helper apprentice schedule of work.

Rule 148. Helper apprentices will receive the minimum helpers' rate for the first six months, with an increase of 2 cents per hour for every six months thereafter until their apprenticeship is completed. If within six months they show no ability to acquire the trade, they will be set back to helping and retain their former seniority as a helper. After completing their apprenticeship, they shall receive the minimum rate paid for the work to which they are assigned, if retained in the service.

Rule 140. The following schedule for helper apprentice, showing the division of time on the various classes of work, is designed as a guide and will be followed as closely as possible:

6 months—Inside wiring and electrical repairing.
6 months—Outside line work.
6 months—Locomotive headlight work.
6 months—Car lighting department.
6 months—Armature winding.
6 months—General electrical work.

Miscellaneous.

Rule 150. Laborers or similar class of workmen shall not be permitted to do helpers' work as outlined in rule 145 if regular electrical worker helpers are available.

Rule 151. Men engaged in the handling of storage batteries and mixing acid must be provided with acid-proof rubber gloves, hip boots, and aprons.

Rule 152. Autogenous welders shall receive 5 cents per hour above the minimum rate paid electrical workers at point employed.

CARMEN'S SPECIAL RULES.

Qualifications.

Rule 153. Any man who has served an apprenticeship or who has had four years' practical experience at car work, and who with the aid of tools, with or without drawings, can lay out, build, or perform the work of his craft or occupation in a mechanical manner, shall constitute a carman.

Classification of work.

Rule 154. Carmen's work shall consist of building, maintaining, dismantling, painting, upholstering, and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flash making, and all other carpenter work in shop and yards; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing, and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and head light boards, tender frames and trucks; pipe and inspection work in connection with airbrake equipment on freight cars; applying patented metal roofing; repairing steam heat hose for locomotives and cars; operating punches and shears doing shaping and forming, hand forges, and heating torches in connection with carmen's work; painting, varnishing, surfacing, lettering, decorating, cutting of stencils, and removing paint; all other work

generally recognized as painters' work under the supervision of the locomotive and car departments; joint car inspectors, car inspectors, safety appliance and train car repairers, wrecking derrick engineers, and wheel record keepers; oxyacetylene, thermit and electric welding on work generally recognized as carmen's work, and all other work generally recognized as carmen's work.

It is understood that present practice in the performance of work between the carmen and boilermakers will continue.

Carmen apprentices.

Rule 155. Include regular and helper apprentices in connection with the work as defined by rule 154.

Carmen helpers.

Rule 156. Employees regularly assigned to help carmen and apprentices, employees engaged in washing and scrubbing the inside and outside of passenger coaches, preparatory to painting, car oilers and packers, stock keepers (car department). Material carriers, rivet heaters (except when performed by apprentices), operators of bolt threaders, nut tappers, drill presses and punch and shear operators (cutting only bar stock and scrap), holding on rivets, striking chisel bars, side sets, and backing out punches, using backing hammer and sledges in assisting carmen in straightening metal parts of cars, cleaning journals, assist carmen in erecting scaffolds, and all other work generally recognized as carmen helpers' work.

Wrecking crews.

Rule 157. Wrecking crews, including engineers and firemen, shall be composed of regularly assigned carmen, and will be paid for such service as per general rules from time called until return to their home

station. Meals and lodging will be provided by the company while crews are on duty in wrecking service.

Rule 158. When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany outfit. For wrecks or derailments within yard limits sufficient carmen will be called to perform the work.

Inspectors.

Rule 159. Men assigned to inspecting must be able to speak and write the English language, and have a fair knowledge of the M. C. B. rules and safety appliance laws.

Rule 160. Inspectors and other carmen in train yards will not be required to take record, for conducting transportation purposes, of seals, commodities, or destination of cars.

Safety appliance men.

Rule 161. Men assigned to follow inspectors in yards to make safety appliance and light running repairs, shall not be required to work on cars taken from trains to repair tracks.

Protection for repairmen.

Rule 162. Switches of repair tracks will be kept locked with special locks, and men working on such tracks shall be notified before any switching is done. A competent person will be regularly assigned to perform this duty and held responsible for seeing it is performed properly.

Rule 163. Trains or cars while being inspected or worked on by train yard men will be protected by blue flag by day and blue light by night, which will not be removed except by men who place same.

One-man points.

Rule 164. A "one man point" is an outlying point where there is employed one carman, day, and one, night, or where there is only one carman employed. Carmen stationed at one man points shall be paid by the hour and under the rules governing running repair forces, except that the eight hours constituting a day's work may be worked within a spread of 10 consecutive hours.

Miscellaneous.

Rule 165. Air hammers, jacks, and all other power driven machinery and tools, operated by carmen or their apprentices, will be furnished by the company and maintained in same working condition.

Rule 166. Crayons, soapstone, marking pencils, tool handles, saw files, motor bits, brace bits, cold chisels, bars, steel wrenches, steel sledges, hammers (not claw hammers), reamers, drills, taps, dies, lettering and striping pencils and brushes will be furnished by the company.

Miscellaneous painters.

Rule 167. The application of blacking to fireboxes and smoke boxes of locomotives in roundhouses will not be considered painters' work.

Rule 168. When necessary to repair or inspect cars on the road or away from the shops, carmen will be sent out to perform such work. Two carmen will be sent to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, putting cars on center, truss rods, and wheels, and work of similar character.

Miscellaneous.

Rule 169. Shops, repair yards, and train yards

where carmen are employed shall be kept clean of all rubbish.

Apprentices.

Rule 170. Regular apprenticeships will be established in all branches of the trade. Apprentices shall be governed by the general rules covering apprentices.

Rule 171. Apprentices shall not work on oxy-acetylene, thermit, electric, or other welding processes until they are in their last year.

Helper apprentices.

Rule 172. Fifty per cent. of the apprentices may be selected from carmen's helpers who have had not less than two consecutive years' experience at the point employed at the time application for apprenticeship is made.

Helper apprentices shall not be over 30 years of age and will serve three years, a minimum of 290 days each calendar year.

Helper apprentices shall be governed by the same laws and rules as regular apprentices.

Helper apprentices shall receive the minimum helpers' rate for the first six months, with an increase of 2 cents per hour each succeeding six months until they have served three years. At the completion of their apprenticeship period, if retained in the service, they shall receive the mechanics' rate of pay.

Painter apprentices, regular.

Rule 173. Regular apprentices—Division of time for painter apprentices:

The following schedule for regular apprentices, painter, showing the division of time on the various classes of work, is designed as a guide and will be followed as closely as the conditions will permit:

6 months—Freight car painting.
6 months—Color room, mixing paint.
6 months—General locomotive painting.
12 months—Brush work, passenger equipment.
18 months—Lettering, striping, varnishing, and such laying out and designing as the shop affords.

Schedule of work, painter helper, apprentices.

Rule 174. Helper apprentices—Division of time for painter apprentices:

The following schedule for helper apprentices, painter, showing the division of time on the various classes of work, is designed as a guide and will be followed as closely as the conditions will permit:

4 months—Freight car painting.
4 months—Color room, mixing paint.
4 months—General locomotive painting.
10 months—Brush work, passenger equipment.
14 months—Lettering, striping, varnishing, and such laying out and designing as the shop affords.

Regular apprentices, carmen schedule of work.

Rule 175. The following schedule for regular apprentices, showing the division of time on the various classes of work, is designed as a guide and will be followed as closely as the conditions will permit. Where sufficient passenger car department work is not available without exceeding the regular ratio of apprentices in the passenger car department, apprentices will complete their apprenticeship in the freight car department:

18 months—General freight work, wood and steel.
6 months—Air brake work.
6 months—Mill machine work.

18 months—General coach work, wood and steel. Helper apprentice, carmen schedule of work.

Rule 176. The following schedule for helper apprentices, showing the division of time on the various classes of work, is designed as a guide and will be followed as closely as the conditions will permit. Where sufficient passenger car department work is not available without exceeding the regular ratio of apprentices in the passenger car department, apprentices will complete their apprenticeship in the freight car department:

12 months—General freight work, wood and steel.
6 months—Air brake work.
6 months—Mill machine work.
12 months—General coach work, wood and steel.

Rule 177. In the event of not being able to employ carmen with four years' experience, and the regular and helper apprentice schedule not providing men enough to do the work, the forces may be increased in the following manner:

Regular apprentices who have served two years and helper apprentices who have served two years may be promoted to mechanics at point employed and will be paid the minimum rate for carmen, seniority to govern.

Helpers who have had four or more years' experience at point employed may be promoted to mechanics, they to receive the minimum rate for carmen and be given an opportunity to learn the trade, seniority to govern.

The duly authorized committee in each shop covered by this agreement will be consulted and mutual understanding arrived at in promoting helpers. The ratio of helpers to be promoted to the number of mechanics in any one shop shall not exceed 20 per cent.

The general chairman on each railroad affected shall be furnished a complete record of the men promoted.

When a reduction is made in force of mechanics, promoted helpers, in accordance with their seniority, shall be set back first, then advanced apprentices. No mechanics to be laid off until all such promoted helpers and apprentices have been set back.

Promoted apprentices and promoted helpers who have not served four years as mechanics will be set back at any time that mechanics with four or more years' experience make application for employment.

Differentials for carmen.

Rule 178. Autogenous welders shall receive 5 cents per hour above the minimum rate paid carmen at point employed.

Differentials for coach cleaners.

Rule 179. For coach cleaners, established basic minimum rate of 41 cents per hour, and to this rate and all rates above 41 cents per hour add 4 cents, making a minimum of 45 cents. Coach cleaners to be included in the national agreement and will receive overtime as provided therein.

MISCELLANEOUS.

Scope of general and special rules.

Rule 180. Except as provided for under the special rules of each craft, the general rules shall govern in all cases.

Effect on existing agreements.

Rule 181. In consideration of the standardization of hours of service and rules governing working conditions hereby established on all railroads in Federal

operation, the general and special rules of this agreement shall supersede and be substituted for the general and special rules of existing agreements in conflict herewith; rules of existing agreements dealing with conditions of employment not specifically provided for herein shall remain in effect and be recognized as addenda to this agreement by the several railroads which negotiated such rules.

Rulings that have been made by the Director General of Railroads and Railway Board of Adjustment No. 2, where not in conflict with the rules of this agreement, shall remain in effect.

Duration of agreement.

Rule 182. These general and special rules and regulations shall remain in full force and effect during Federal operation unless superseded or amended as herein provided. They shall be printed by the railroads, and each employee affected thereby shall be provided with a copy on request.

Revision of agreement, etc.

Rule 183. Should either the Railroad Administration or the organizations desire to revise these rules, a written statement containing the proposed changes shall be given and conference held within 30 days to arrange details necessary to negotiate to a conclusion.

Rule 184. Except as herein provided, nothing in these rules shall be construed to supersede methods of procedure promulgated by the Railroad Administration for the handling of grievances, or the application or interpretation of the provisions of this agreement.

Rule 185. This agreement shall become effective 30 days after date signed by the Director General of Railroads and the representatives of the employees' organizations.

Rule 186. Differentials provided for in this agreement for highly skilled employees shall become effective as of May 1, 1919.

Signed by—

WALKER D. HINES,
Director General of Railroads.

J. F. ANDERSON,
Vice-President International Association of Machinists.

LOUIS WEYAND,
Acting President International Brotherhood of Boilermakers, Iron Ship Builders, and Helpers of America.

JAS. W. KLINE,
President International Brotherhood of Blacksmiths and Helpers.

J. J. HYNES,
President Amalgamated Sheet Metal Workers' International Alliance.

JAS. P. NOONAN,
Acting President International Brotherhood of Electrical Workers.

MARTIN F. RYAN,
President Brotherhood Railway Carmen of America.

B. M. JEWELL,
Acting President Railway Ecployees' Department, A. F. of L.

Dated September 20, 1929.

PLAINTIFFS' EXHIBIT No. 13.

PENNSYLVANIA SYSTEM

In Reply Refer to No.

Altoona, Pa., July 24, 1921.

Mr. Charles Kutz,
1300 Jefferson Avenue,
Altoona, Pa.

Dear Sir:—

I have before me your letter of July 23rd, and note what you say.

You are well aware of the fact that your furlough was granted for a definite and specific purpose, viz., as a representative of the employes with whom we were dealing at that time. Since that time, other representatives having been elected by the employes in place of you, the reason for granting a furlough to you no longer exists, therefore, either you will obey the instructions you have received or your name will be taken from our rolls.

Yours truly,
J. C. Mengel,
Master Mechanic.

Altoona, Pa. July 23, 1921.

Mr. J. C. Mengle, Master Mechanic,
Altoona Machine Shops, Altoona, Pa.

Dear Sir:—

Upon my return to Altoona this A. M. I found your letter of July 15, 1921, which was addressed to me, in which letter you informed me to the effect that my furlough will expire on July 25th, 1921 and also that I am to report for duty on or before that date.

I wish to enter a protest at this time against your action of terminating my leave of absence or furlough on above date, for several reasons: first, according to

Rules No. 21 and 39 of the National Agreement which were by authority of the United States Labor Board promulgated beyond July 1st, 1921 in amendment No. 2 to Decision No. 119. I as a representative of District No. 40, International Association of Machinists which organization is affiliated with Pennsylvania System Federation No. 90 which organization was elected by employees of the Pennsylvania Railroad Shop Crafts in compliance with the requirements of Decision No. 119 to represent them in matters pertaining to Decision No. 119.

I am fully within my rights in requesting a continuation of my leave of absence or furlough beyond July 25th, 1921.

Therefore I respectfully request as a duly authorized representative of the above named elected organization of the employees of the P. R. R. a continuation of my leave of absence in accordance with privileges contained in Rules 21 and 39 of the National Agreement and also in accordance with privileges contained in Decision No. 119.

And further as the controversy between P. R. R. Co. and System Federation No. 90 is now properly before the U. S. S. Labor Board and a Decision no doubt will shortly be forthcoming deciding this dispute regarding matters pursuant to Decision No. 119 I therefore respectfully request that you rescind your instructions terminating my furlough as of July 25th, 1921 and grant a continuation of same as above requested.

Charles Kutz.

Altoona, Pa., July 15, 1921.

Mr. Chas. Kutz,
411-12 Ferguson Bldg.,
Pittsburgh, Penna.

Dear Sir:—

The employes having selected representatives to represent them in accordance with the terms of Decision No. 119 of the United States Railroad Labor Board, and the Schedule of Regulations went into effect at 12:01 A. M., July 1st., 1921.

You are hereby notified to report for duty on or before Monday, July 25th., as your furlough will expire on that date.

Yours truly,
J. C. Mengel,
Master Mechanic.

PLAINTIFFS' EXHIBIT No. 14.

July 21, 1921.

Mr. T. B. Ferrington,
Master Mechanic—P. R. R. Shops,
Columbus, Ohio.

Dear Sir:

In reply to yours of July 15, cancelling my furlough and ordering me to turn in my system transportation, on account of my no longer representing the employees, who have according to your letter elected other representatives.

In this connection would like to call to your attention the fact that on June 18, 1921, there was presented to the United States Labor Board by System Federation #90, and ex parte statement, requesting an interpretation of Decision 119 as to the manner in which representatives should be selected.

June 29, the United States Labor Board issued Addendum #2 to Decision 119 which continued in effect all rules of the National Agreement, with the possible exception of the overtime rules, on all Railroads of the Country, pending the negotiations of new agreements.

Our representatives and those of the Pennsylvania Railroad appeared before the United States Labor Board July 8 and 9, 1921, and presented arguments to substantiate their different positions, decision on which has not as yet been rendered.

In view of the fact that this dispute is still pending, I cannot understand the position taken by the Company in this matter.

I further wish to call your attention to the action taken by the elected committee in St. Louis, July 12, 1921, who signified by their action that it was their desire that System Federation #90 negotiate rules and working conditions for the men of the several Crafts affiliated with it.

Further in making their presentation to the Board, the Company thru Mr. J. T. Wallis, Chief of Motive Power, read in a statement in opposition to the closed shop, which they claimed the National Agreement created. In assuming their present position the Company has virtually declared that a closed shop exists as far as the men who refused to vote the Company's ballot are concerned.

There is no question as to these men being in the majority, and by their present action the Company is now denying them the representation they desire, thereby, establishing a closed shop.

If my understanding of Addendum #2 to Decision 119 and the Board's telegram of July 29, to Mr. Atterbury, are correct, the National Agreement is still in

effect, Rule #39 of which provides for leave of absence and transportation of representatives of employees.

In view of these facts I believe this matter should be given further consideration, and I would like very much to hear from you in this connection at my Pittsburgh address.

Yours very truly,

(Sgd.) A. C. Myer,
General Chairman,
Sheet Metal Workers.

ACM-MM

PENNSYLVANIA SYSTEM
Southwestern Region

Desk 1—fs Columbus, O., July 15, 1921.

Mr. A. C. Myer,
2242 Indiana Avenue,
Columbus, Ohio.

Dear Sir:

As a result of the election recently held, you are no longer the authorized representative of the employes of this Region, whom you have heretofore claimed to represent, and your leave of absence for Committee work is hereby cancelled. You will report to your immediate superior, within ten (10) days from date of this letter (Monday, July 25th), for duty.

Please return at once the annual passes issued to you in connection with your work as former General Committeeman.

Yours truly,

T. B. Ferrington,
Master Mechanic.

PLAINTIFFS' EXHIBIT No. 15.

011.222

Harrisburg, Pa., July 26, 1921.

Mr. H. A. Bixler,
Room 414 Morewood Building,
East End, Pittsburgh, Pa.

Dear Sir:

Enclosed please find two copies of discipline notice, one copy to be signed and dated by you in the place underscored in red pencil and the other copy to be retained for your information. Please sign and return one copy in enclosed stamped envelope by return mail.

Yours truly,
L. B. Jones,
Master Mechanic.

1/m

PENNSYLVANIA SYSTEM
EASTERN REGION
NOTICE OF DISCIPLINE

E.J.C.

Kindly approve and return.

7-25-21 L.B.J.

Philadelphia Division
July 25, 1921

No. 011.222
Name H. A. Bixler,
Occupation Sheet Metal Worker
Discipline Dismissal
Date of Occurrence July 25th, 1921
Engine Train Place
Outline of Offense Disregard of instructions—Failed to report for duty as ordered by the Master Mechanic.

By order of the Superintendent

.....

The following must be signed by the Employe concerned:

This certifies that I was notified..... 192... that I would be disciplined in accordance with the above order, and that I understand that same will be put into effect.....days from date or as soon thereafter as may be arranged.

.....

Date ....

This order was put into effect

Officer's

Signature .....

Original to be returned to.....

Copy to be retained by Employe.

July 27, 1921.

Mr. L. B. Jones,
Master Mechanic—P. R. R. Co.,
Cor. Calder & Seventh Sts.,
Harrisburg, Pa.

Dear Sir:

Yesterday I was called on the 'phone by Mr. Cunningham, who informed me that you had received my System Transportation and that he should request that I send you immediately my W. J. S. pass, also transportation held by Mrs. Bixler. Mr. Cunningham also informed me that I was out of the service.

I will arrange as soon as possible to have the transportation held by Mrs. Bixler sent your Office and enclose herewith my W. J. S. pass. This transportation is being sent under protest as it deprives me of the privileges of Addendum #2 to Decision #119.

I am at a loss to understand why this information

has been conveyed to me by 'phone thru Mr. Cunningham's Office instead of hearing direct from you.

Yours very truly,

Secretary-Treasurer.

HAB-MM
Enc.

July 25, 1921.

Mr. L. B. Jones,
Master Mechanic—P. R. R. Co.,
Cor. Calder & Seventh Sts.,
Harrisburg, Pa.

Dear Sir:

I have this A. M. been called on the 'phone by Mr. Cunningham's Office and advised that you had requested Mr. Cunningham to inform me that I should return my System Transportation to you immediately, and accordingly it is enclosed herewith.

Yours very truly,

Secretary-Treasurer.

HAB-MM
Enc.

July 22nd, 1921.

Mr. L. B. Jones, Master Mechanic,
Pennsylvania Railroad,
Harrisburg, Pa.

Dear Sir:

I have been called on the 'phone several times by Mr. Cunningham's Office this date, advising me that you had informed him, by 'phone conversation, to get in touch with me and request of me to turn in my System Transportation.

Your letter of the 15th instant, advising me to report for work on or before July 25th, did not mention the cancellation of my System Transportation. Is it your desire that I turn in this transportation to Mr. Cunningham's Office or should I mail it direct to you?

Awaiting your answer, I am

Very truly yours,

Secretary-Treasurer.

HAB/C.

July 21, 1921.

Mr. L. B. Jones,
Master Mechanic—P. R. R. Co.,
Harrisburg, Pa.

Dear Sir:

I have yours of July 16th., advising that the furlough granted me under date of January 22nd., 1921 has been with-drawn. The letter of January 22nd., 1921, signed G. LeBoutillier, General Superintendent and addressed to E. J. Cleaves, Superintendent, which I have in my possession authorizes the extension of a nine month furlough on account of my activities as Secretary-Treasurer of System Federation #90.

The Company's action in with-drawing my furlough is not in compliance with my understanding of Decision 119. You are well aware that under date of June 29th., the United States Labor Board recognized that a dispute existed over the selection of representatives in accordance with Decision 119 on the Pennsylvania System, and Mr. Atterbury was notified by the United States Labor Board that Addendum #2 to Decision 119 would apply until such time that a decision would be handed down by this Board settling the existing dispute.

Addendum #2 to Decision 119 continued in effect the Rules previously recognized by the Pennsylvania System, and Rule #39 of these Rules provides a leaf of absence for those who are delegated to represent other employees.

According to my understanding of your letter a closed shop has been established and no employee is entitled to representation except by those designated on Company Ballot, by this act closing your doors to the majority of employees which we have clearly shown to the Labor Board we represent or consistent with the Pennsylvania Railroad Officials attitude before same Board July 8 and 9, 1921.

In view of the above statements and the existing conditions on the Pennsylvania Railroad, would request that you arrange to continue in effect General Superintendent LeBoutillier's letter of January 22nd., by further consideration of this matter.

Yours very truly,

Secretary-Treasurer.

HAB-MM

012.32

Harrisburg, Pa., July 16, 1921.

Mr. H. A. Bixler,
Harrisburg, Pa.

Dear Sir:

The furlough which was granted you under date of January 22nd, 1921 has been withdrawn. Please arrange therefore to report to Mr. George Robinson, Foreman, Boiler Shop, Harrisburg, Pa., on or before July 25th, 1921.

Yours truly,
L. B. Jones,
Master Mechanic.

1/m

(Copy) 012.32

Harrisburg, Pa., January 22nd., 1921.
Desk 1.

Mr. E. J. Cleave,
Superintendent.

Dear Sir:

Your letter of December 6th, 1920, Desk 1: You are authorized to grant H. A. Bixler, Sheet Iron Worker, acting as Secretary-Treasurer of System Federation No. 90, Shop Crafts, a nine month's extension of his furlough, on account of his activities in the above named capacity.

Yours truly,
(Signed) G. LeBoutillier,
General Superintendent.

LBJ 1-24-21
In reply to your letter
of January 18th.
E.J.C.

C.J.Z.....G.R... 1-24-21
To note and arrange accordingly.
L.B.J.

JHW

In United States Circuit Court of Appeals for the Third Circuit, March Term, 1924

No. 3140 (List No. 21)

Penna. R. R. System, etc., Federation No. 90, et al., Appellants,

vs.

Pennsylvania R. R. Co. et al., Appellees

On Appeal from the District Court of the United States for the Eastern District of Pennsylvania

Order Assigning Joseph L. Bodine for Argument—Filed April 8, 1924

And now, to wit: This 8th day of April A. D. 1924, it is ordered that Hon. Joseph L. Bodine, District Judge for the — District of New Jersey, be, and he is hereby assigned to sit in above case in order to make a full court.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

In United States Circuit Court of Appeals

[Title omitted]

Argument and Submission

And afterwards, to wit, on the eighth day of April, 1924 come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Victor B. Woolley and Honorable J. Warren Davis, Circuit Judges, and Honorable Joseph L. Bodine, District Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the fourteenth day of July, 1924, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

In United States Circuit Court of Appeals

[Title omitted]

Opinion—Filed July 14, 1924

Woolley, Circuit Judge.

These cases concern controversies between a railroad employer and its employees and call for an interpretation of Title III of the Trans-

portation Act of 1920. 41 Stat. 456, 469. Beyond this it is impossible to state the questions involved without first stating the facts from which they arose.

The two cases are against the same carrier, the Pennsylvania Railroad Company, and its officials. The first was instituted by bill in equity filed by the Pennsylvania System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, setting forth grievances peculiar to the crafts indicated by the title of the complainant labor union; the second was instituted by a similar bill filed by the Pennsylvania Railroad System and Allied Lines Federation No. 90, and certain persons as individuals and officials, stating grievances peculiar to the crafts indicated by the title of this complainant labor union; both asserting rights conferred by the Transportation Act, averring violations thereof by the Railroad Company and its officials, and praying that the Railroad Company and its officials be enjoined from further acting to their injury.

The law on which the two bills are based is the same and the facts on which they are rested differ only in those details which arise from differences in the crafts and their labor organizations. As the action brought by the Pennsylvania Railroad System and Allied Lines Federation No. 90 (to which for convenience we shall hereafter refer as System Federation No. 90) embraces all questions raised in the action brought by the Pennsylvania System Board of Adjustment of the Brotherhood of Railroad and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as Brotherhood of Clerks) and embraces one or two more, we shall, in an effort to keep this opinion within reasonable bounds, recite only the facts of the former case and then only those facts averred in more than one hundred printed pages of the bill which we think are pertinent. They are as follows:

Prior to December 28, 1917, the Pennsylvania Railroad Company (hereinafter referred to as the "Company") operated railroads in twelve states under what was commonly known as the "Pennsylvania System." The Company employed a large number of men in shop or mechanical work in and about the repair and maintenance of locomotives, cars, and other equipment and also a large number as clerks, freight handlers, express and station employees. Many men of all crafts were members of labor unions and many were not. Thorough unionization of these crafts was resisted by the Company which, being antagonistic to labor organizations generally, refused to recognize and deal with their unions, although it recognized and, under collective agreements, dealt with four other labor organizations, namely; the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and the Brotherhood of Railway Trainmen, known collectively as the "Big Four."

On December 28, 1917, the President of the United States, by authority of the Act of Congress of August 29, 1916, c. 418, 39 Stat. 619, 645, took over the railroads of the country, including

those of the Pennsylvania System, and operated them through the Director General of Railroads. On February 21, 1918, the United States Railroad Administration issued an order, known as General Order No. 8, which prohibited discrimination against employees because of membership or non-membership in labor organizations. In consequence of this order local unions and lodges of the national organizations of shopcrafts of the Company became active and, in July, 1918, their representatives met at Altoona and formed the Pennsylvania Railroad System and Allied Lines Federation No. 90, one of the complainants. This relatively local labor organization became affiliated with the national organization of the American Federation of Labor. A full statement of the relation of these major and minor organizations is unimportant except to note that the constitution and by-laws of System Federation No. 90 showed an interdependence in action and provided against strikes by employees of any member craft unless authorized by that organization on a referendum vote and sanctioned by the American Federation of Labor. In the spring and summer of 1918, the war being on, the Railroad Administration issued several general orders revising and increasing the wages of shopcraft employees, making the rates uniform throughout the country, establishing definite and uniform classification and discontinuing the system of piecework. Thereafter the Railroad Administration entered into an agreement with the national body of railroad employees of the classes here in question, represented by the American Federation of Labor and its affiliated organizations, including System Federation No. 90. This agreement, which because of its scope became known as the "National Agreement," further increased wages and dealt generally with conditions of labor. About February 1, 1920, the war being over, shopcraft employees and employees of other classes presented to the Railroad Administration a request for a still further increase of wages and for further modifications of the National Agreement concerning working conditions. With this request pending and undetermined, the Congress passed the Transportation Act which, being approved by the President, became a law on February 28, 1920. Under its terms federal control of railroads ended on March 1, 1920, and on that day all railroads, including those of the Pennsylvania System, were returned to their owners.

In order properly to understand the remaining facts of these cases it will be necessary to stop at this point and briefly review the pertinent provisions of the Federal Transportation Act—holding in mind the existence of the National Agreement and the pending demand for increase of wages.

The portion of the Act here in question is Title III, which provides for the settlement of diputes between railroad companies engaged in interstate commerce and their employees. Following closely the summary of the Act made in the report of the case of the Pennsylvania Railroad Company vs. United States Railroad Labor Board, 261 U. S. 72, Section 301 makes it the duty of carriers and their employees to exert every reasonable effort to avoid interruption to the operation of an interstate commerce carrier because

of disputes between them, and further provides that such disputes shall be considered and, if possible, decided "In conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute." The section concludes: "If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board which under the provisions of this title is authorized to hear and decide such disputes."

Section 302 provides for the establishment of Railroad Boards of Labor Adjustment by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees of the same. No such Boards of Adjustment were established when the controversy with System Federation No. 90 arose.

Section 303 provides for hearing and decision by such Boards of Adjustment of any dispute involving only matters not decided as provided in Section 301.

Sections 304, 305 and 306 provide for the appointment and organization of a "Railroad Labor Board" composed of nine members, three from a group representing labor, three from a group representing the carriers, and three from a group representing the public.

Section 307 (a) provides that when a Labor Adjustment Board, under Section 303 has not, within a reasonable time, reached a decision of a dispute submitted to it, or when the appropriate adjustment board has not been organized under Section 302, the Railroad Labor Board "(1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions which is not decided as provided in section 301." Paragraph (b) of the same section provides for a hearing and decision of disputes over wages and paragraph (c) requires in a decision by the Labor Board the concurrence of five of the nine members, of whom, in the case of wage disputes, a member of the Public Group must be one. This paragraph further provides that, "All decisions of the Labor Board * * * shall be immediately communicated to the parties to the dispute, the President, each Adjustment Board, and the (Interstate Commerce) Commission, and shall be given further publicity in such manner as the Labor Board may determine." Paragraph (d) requires that decision of the Labor Board shall establish standards of working conditions which in its opinion are just and reasonable.

Section 308 Prescribes other duties and powers of the Labor Board among which is that of making "regulations necessary for the efficient execution of the functions vested in it by this title."

Section 313 reads as follows:

"The Labor Board, in case it has reason to believe that any decision of the Labor Board or of an Adjustment Board is violated by any carrier, or employee or subordinate official, or organization thereof, may upon its own motion after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine."

Returning to the situation as it existed at the time of the enactment of the Transportation Act when a demand for increase of wages and change of working conditions had but recently been made by carrier employees, it appears that between that date and the date of the organization of the Labor Board many conferences looking to the settlement of the dispute were held between heads of labor organizations, signatories to the National Agreement, and representatives of the railroads. Conferences between the Pennsylvania Railroad Company and its employees were not successful. When the Labor Board was organized on April 15, 1920, it assumed jurisdiction of these pending disputes and proceeded to deal with them. On July 20, 1920, it rendered a decision upon the wage dispute but postponed decision upon the dispute as to rules and working conditions until April 14, 1921, when it decided that such rules and working conditions as were fixed by the National Agreement with respect to all railroads and had been continued as a modus vivendi should end July 1, 1821, and remanded the controversy to the carriers and their employees, calling upon them respectively to designate representatives for conference and asking them to keep the Board advised of their progress. The Labor Board accompanied this decision, known as Decision No. 119, with a statement of principles which thereafter it intended to follow in the consideration and settlement of disputes between carriers and their employees. Those here pertinent ar- Principles 5, 7 and 15. They read as follows:

"5. The right of such lawful organizations to act toward lawful objects through represenatives of its own choice, whether employees of a particular carrier or otherwise, shall be agreed to by management.

"7. The right of employees to be consulted prior to a decision of management adversely affecting their wages or working conditions shall be agreed to by management. The right of participation shall be deemed adequately complied with, if and when the representatives of a majority of the employees of each of the several classes directly affected shall have conferred with the management.

"15. The majority of any craft or class of employees shall have the right to determine what organizations shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organization represent-

ing the majority to present grievances either in person or by representatives of their own choice."

In view of the approaching end of the National Agreement and and in response to the general mandate of the Labor Board that carrier employers and employees compose their differences, representatives of the Company and of System Federation No. 90 met in Philadelphia on May 24, 1921. At this meeting the officials of System Federation No. 90 stated that their organization comprised a majority of the employees of the Pennsylvania System in the crafts named and that they had come as their representatives prepared to confer and agree with the Company in accordance with Decision No. 119 of the Labor Board. The officials of the Company questioned whether System Federation No. 90 spoke for a majority of its shop employees and for lack of proof refused to confer with its representatives. Moreover, the Company informed the representatives of System Federation No. 90 that, acting in pursuance of Decision No. 119 of the Labor Board, it would recognize organizations of its shopcraft employees but that the representatives of such organizations must be individuals actually in the employ of the Company and at work at the time in its service, and indicated that in order to be assured of this and of the authority of labor spokesmen, it would send out a formal ballot to these employees asking them to name thereon their conference representatives. Just here is the center of the controversy. The officials of the Company showed the officials of System Federation No. 90 the ballot which it intended to submit to its shopcraft employees for the selection of representatives to attend a conference to adjust the dispute. It appeared from this ballot that the Company proposed to divide these employees by Superintendent Divisions and members of each craft in each division were to vote for and elect three of their number to represent them in disputes arising in their division. If a dispute of a wider character should arise, provision was made for regional committees whose members should be selected by the division representatives previously elected by the employees of the several crafts. (All this involves matters of detail of which nothing more need be stated here than, when put into practice, the plan would carry out the purpose of the Company to limit conference representatives of its employees to natural persons and to those actually in its employ and at work.) The ballot also disclosed that employees on strike would not be allowed to vote. The representatives of System Federation No. 90 objected to this ballot because it was not in accordance with their understanding of Principles 5, 7 and 15 announced by the Labor Board in that it made no provision for representation of employees by a labor organization and excluded from conference everyone not in the Company's employ, that is, it excluded outside representation. On this question the opposing parties broke, with the result that the Company and System Federation No. 90 each sent out ballots. The Federation advised its members not to vote the Company's ballot and the Company announced it would not recognize the Federation's ballot.

Both parties actively and bitterly participated in the election that followed. The return showed that 5,236 employees actually at work voted the Company's ballot and 37,245 employees—embracing men at work and men on strike—voted the Federation's ballot. In due course the persons chosen by employees voting the Company's ballot met the Company's representatives in conference and formally entered into an agreement respecting rules and working conditions. The Company regarded this as an end to the matter. System Federation No. 90, however, promptly filed with the Labor Board a complaint against the Company under Section 307 of the Transportation Act. The Company appeared, and, after hearing, the Labor Board decided (Decision No. 218) that neither form of the ballots sent out by the parties was proper, that the labor repesentatives chosen on the Company's ballot were not lawful representatives and that, in consequence, the rules and working conditions agreed upon by them were void. The Labor Board then ordered a new election for which it prescribed rules and the form of ballot, specifying that labor organizations as well as individuals might be voted for as representatives of the employees. The Company refused to accept Decision No. 218 or to carry out its provisions and also refused to cancel the election already held or to abrogate the agreement it had entered into with its employees as a result thereof. The Company petitioned the Labor Board to vacate its order on the ground that there was no dispute before it of which the Transportation Act gave it jurisdiction. Upon its refusal the Company filed a bill in equity against the Labor Board and its members in the District Court of the United States for the Northern District of Illinois praying an injunction against them for their alleged unlawful proceeding under the Act and especially against their threatened official publication under Section 313 that the Company had violated the Board's decision. A preliminary injunction was granted. 282 Fed. 693. On appeal by the Labor Board the United States Circuit Court of Appeals for the Seventh Circuit vacated the injunction and directed a dismissal of the bill. 282 Fed. 701. Thereupon the Company took an appeal to the Supreme Court which, on February 19, 1923, interpreting the Act and deciding matters to which we shall advert later, affirmed the decree of the Circuit Court of Appeals. 261 U. S. 72. The Labor Board then, of its own motion, again requested the Company to comply with its Decision No. 218. On the Company's refusal it rendered Decision No. 1829 in which it held that the Pennsylvania Railroad Company "has violated decision No. 218 of the board, after the Supreme Court of the United States had upheld the board's right to render said decision, and has thereby denied to its shop employees essential rights as laboring men to which Congress has declared them entitled."

System Federation No. 90 formally informed the Company of the readiness of its members to resume work upon the terms and conditions established by the Labor Board. The Company refused this tender and adhered, and still adheres, to the agreement made with representatives of its employees elected in the manner indicated. These actions followed.

In concluding their bill the complainants contend that all "furloughed employees," that is, employees on strike, who were refused reemployment in accordance with their seniority rights, and employees "who were discharged by the Company for refusing to waive their rights under the Transportation Act," are entitled to recover damages for loss of employment. In addition they show that a large number of the Company's employees, members of System Federation No. 90, did not strike in the summer of 1921 but continued at work under the wages, rules and conditions established by the Company's alleged unlawful agreement with representatives of its employees and contend that they are entitled to be paid by the Company the difference between the amounts actually received by them and the amount they should have received at the rate of wages in force on the first of July, 1921. On the facts and contentions thus summarized the complainants pray for a decree restraining the defendant (Pennsylvania Railroad Company) from enforcing the provisions of the agreement with respect to wages and working conditions made between it and its employees on the vote taken; from enforcing any change in wages and working rules as they existed on June 30, 1921, that is, as they existed under the National Agreement; from continuing to deal with persons chosen on Company's ballots as representatives of the employees engaged in mechanical work; from financing, interfering with, directing and controlling the organizations of the Company's employees for the purposes set forth in the Transportation Act, and from refusing to confer and deal with System Federation No. 90 as the organization representing the great majority of the Company's employees engaged in such work. In addition the complainants ask for a decree for an accounting of damages sustained by members of System Federation No. 90 upon the grounds previously stated.

The theory of these cases is both negative and affirmative. It is negative in the sense that the complainants do not expressly ask the court to enforce any of the decisions which the Labor Board made in this dispute. Obviously, this is for the reason that the Supreme Court, in Pennsylvania Railroad Company vs. United States Railroad Labor Board, 261 U. S. 72, decided that orders of the board are not enforcible by the courts. Going a step further, they say their position is entirely independent of Decisions Nos. 119 and 218 of the Labor Board prescribing rules and form of ballot for choice of representatives by the employees, and of Decision No. 1829 declaring that the Company had violated its decision, although the practical effect of a decree granting the prayers of their bills would be the enforcement of these orders. The theory is affirmative in the sense that the complainants stand upon what they describe as their "civil and statutory rights," and, averring a conspiracy to deprive them of these rights, they invoke the injunctive remedy of a court of equity, in the absence of an adequate remedy at law, to restrain the respondents from continuing and completing such conspiracy to their injury.

From the length and intensity of the conflict indicated by our statement, as well as from the many positions taken and matters

argued in the briefs, we find that, after all, the issues narrow to a single question—What are the civil and statutory rights of the complainants in the premises? This is the true question involved and upon its answer all others turn.

We do not understand just what the complainants mean by their "civil" rights. If they mean such as are accorded labor by general law,—the right lawfully to organize, United Mine Workers vs. Coronado Coal Co., 259 U. S. 344, the right to bargain collectively, the right to strike,—no invasion of such rights is shown and, accordingly, none is here in question. Moreover, the complainants have expressly grounded their actions on the Transportation Act of 1920 and, limiting their grievance against the respondents to their refusal to observe its terms, they have asserted that the conduct of the respondents is in violation of rights granted them by that Act in declaring a national policy in respect to railroad labor disputes. Thus both the pleadings and the facts show that complainants stand on their statutory rights. To these alone we shall address discussion.

It is evident that in enacting the Transportation Act of 1920, and, through it, affording means by which to prevent interruption of interstate commerce by labor disputes and strikes, the Congress had the public interest first in mind. It was more concerned in protecting the public than in conferring rights upon railroad employers and employees. To this end it set up machinery which these contending forces could invoke to compose their differences, or which could be invoked against them. This machinery was novel in character and was intended to function not by ordinary processes but by the force of public opinion. It did not disturb many of the rights which theretofore admittedly belonged to an interstate carrier and to its employees. The carrier's right to deal with individual representatives of its employees remained. The right of employees, who are members of labor unions, to select their own conference representatives without the right of their employer to restrict their selection to its own employees and exclude officers of labor unions was not abridged. Moreover, the "statute does not require (the carrier) to recognize or to deal with, or confer with labor unions. It does not require employees to deal with their employers through their fellow employees." Pennsylvania Railroad Company vs. Labor Board, 261 U. S. 72, 84. With such rights preserved to these opposing forces and with no new rights of the kind here in issue expressly given them, the statute imposes certain duties and confers certain powers upon the Labor Board. One of these is the power to decide a labor dispute between a carrier employer and its employees. This power of decision, however, does not carry with it a power of execution. Obedience to decisions of the Labor Board is not compulsory; enforcement of its decisions rests solely upon public opinion marshalled on publication of the conduct of the offending party. This is as true of interlocutory decisions as of final decisions. Though a decision be in favor of employees, we can not

find anything in the statute which gives them a right to its enforcement by the courts.

Having power to decide a dispute which has either been submitted to it or of which it has taken control of its own motion, the Labor Board also has the power to decide before hand who may properly represent the parties and to prescribe rules by which to ascertain their will in this regard. This power cannot be defeated by the non-action of a party; nor can its power to proceed to final decision be defeated by refusal of either party to obey its order. The action of the Labor Board by Decision No. 218 in finding the election of representatives by the Company's employees in the cases at bar void and prescribing a method and form of ballot for a new election was held by the Supreme Court to be within its power Pennsylvania Railroad Company vs. Labor Board, 261 U. S. 72, 83. But this was the assertion of a right which the statute confers upon the Labor Board, not upon the parties to the dispute. A right of employer or employees to insist that the other proceed to a hearing pursuant to such rules as the Labor Board may have prescribed is not conferred upon either party to a dispute unless the statute makes it compulsory upon them. If compulsory, and if, as in this instance, the employer should refuse to obey the rules which the Labor Board has prescribed for an election of representatives and otherwise should fail to submit itself to the Labor Board, then by implication the statute might raise a right in the employees to have the dispute heard in the manner the Labor Board has provided and, conceivably, they might obtain enforcement of that right by legal process. But we find nothing in the statute which makes it compulsory upon the employer to confer with the representatives of the employees or further to contest the matter before the Labor Board. Though liable to such punishment as public opinion may inflict, the employer (and likewise, in a reverse situation, the employees) may, for any reason, or no reason at all, decline further to engage in the dispute. As obedience to the mandate of Decision No. 218 of the Labor Board respecting a new election of representatives was not compulsory upon the Company, its refusal to obey the decision violated no legal or equitable rights of the complaining employees. This is an instance where the machinery which the Congress set up did not work through to final decision and resulted in no punishment except that of public opinion directed against the Company by the announcement of the Labor Board's Decision No. 1829. As the Transportation Act of 1920 makes no provision for a situation where one of the parties defaults, it does not provide the other party (in this instance the employees) with means to coerce the defaulting party.

Further asserting statutory rights in themselves, the complainants maintain that the conduct of the Company and its officers was a statutory offense in the nature of conspiracy under the provisions of Section 19 of the Criminal Code which provides that, "If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privi-

lege secured to him by the * * * laws of the United States," they shall be punished, and they further maintain that injunction will lie to restrain means for promoting such conspiracy. Pettibone vs. United States, 148 U. S. 197; Duplex Co. vs. Deering, 254 U. S. 465. Even so, the thing which is done or is threatened must in itself be unlawful, or if lawful, it must be carried out by unlawful means in order to constitute a conspiracy. The thing here charged against the Company was conduct which, under the terms of the Transportation Act and in the light of the decision of the Supreme Court in Pennsylvania Railroad Company vs. Labor Board, supra, was not unlawful either in purpose or in means employed to carry out the purpose. It follows that in their conspiracy charge the complainants are not aided by a statutory right.

For these several reasons we are constrained to hold with the learned trial Judge (294 Fed. 556 and 296 Fed. 220) that the complainants have not shown rights for the enforcement of which the processes of a court of equity are available.

The decrees of the District Court dismissing the bills are affirmed.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Appeal from the District Court of the United States for the Eastern District of Pennsylvania

JUDGMENT—Filed July 14, 1924

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, July 14, 1924.

Victor B. Woolley, Circuit Judge.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

ASSIGNMENTS OF ERRORS—Filed Sept. 11, 1924

All of the above named Appellants, Complainants, now come by their Counsel, and in connection with their petition for appeal, file the following Assignments of Errors, on which they will rely on their appeal to the Supreme Court of the United States from the final order of the said United States Circuit Court of Appeals for the Third Circuit affirming the decree of the District Court of the United States for the Eastern District of Pennsylvania, in the above entitled cause, which decree of the District Court ordered that the Bill filed by the Complainants, Appellants, should be dismissed.

The Circuit Court of Appeals erred:—

1. In affirming the decree of the District Court of the United States for the Eastern District of Pennsylvania dismissing the bill filed by the Appellants.

2. In deciding and holding as follows:
"We do not understand just what the complainants mean by their 'civil' rights. If they mean such as are accorded labor by general law,—the right lawfully to organize, United Mine Works vs. Coronado Coal Co., 259 U. S. 344, the right to bargain collectively, the right to strike,—no evasion of such rights is shown and, accordingly, none is here in question."

3. In holding and deciding as follows:

"Moreover, the complainants have expressly grounded their actions on the Transportation Act of 1920 and, limiting their grievance against the respondents to their refusal to observe its terms, they have asserted that the conduct of the respondents is in violation of rights granted them by that Act in declaring a national policy in respect to railroad labor disputes. Thus both the pleadings and the facts show that complainants stand on their statutory rights."

4. In deciding and holding as follows:

"It is evident that in enacting the Transportation Act of 1920, and, through it, affording means by which to prevent interruption of interstate commerce by labor disputes and strikes, the Congress had the public interest first in mind. It was more concerned in protecting the public than in conferring rights upon railroad employers and employees. To this end it set up machinery which these contending forces could invoke to compose their differences, or which could be invoked against them. This machinery was novel in character and was intended to function not by ordinary processes but by the force of

public opinion. It did not disturb many of the rights which theretofore admittedly belong to an interstate carrier and to its employees. The carrier's right to deal with individual representatives of its employees remained. The right of employees, who are members of labor unions, to select their own conference representatives without the right of their employer to restrict their selection to its own employees and exclude officers of labor unions was not abridged. Moreover, the 'statute does not require (the carrier) to recognize or to deal with, or confer with labor unions. It does not require employees to deal with their employers through their fellow employees.' "

5. In deciding and holding as follows:

"With such rights preserved to these opposing forces and with no new rights of the kind here in issue expressly given them, the statute imposes certain duties and confers certain powers upon the Labor Board. One of these is the power to decide a labor dispute between a carrier employer and its employees. This power of decision, however, does not carry with it a power of execution. Obedience to decisions of the Labor Board is not compulsory; enforcement of its decisions rests solely upon public opinion marshalled on publication of the conduct of the offending party. This is as true of interlocutory decisions as of final decisions. Though a decision be in favor of employees, we can not find anything in the statute which gives them a right to its enforcement by the Courts."

6. In deciding and holding as follows:

"But we find nothing in the statute which makes it compulsory upon the employer to confer with the representatives of the employees or further to contest the matter before the Labor Board. Though liable to such punishment as public opinion may inflict, the employer (and likewise, in a reverse situation, the employees) may, for any reason, or no reason at all, decline further to engage in the dispute. As obedience to the mandate of Decision No. 218 of the Labor Board respecting a new election of representatives was not compulsory upon the Company, its refusal to obey the decision violated no legal or equitable rights of the complaining employees. This is an instance where the machinery which the Congress set up did not work through to final decision and resulted in no punishment except that of public opinion directed against the Company by the announcement of the Labor Board's Decision No. 1829. As the Transportation Act of 1920 makes no provision for a situation where one of the parties defaults, it does not provide the other party (in this instance the employees) with means to coerce the defaulting party."

7. In deciding and holding as follows:

"Further asserting statutory rights in themselves, the complainants maintain that the conduct of the Company and its officers was

a statutory offense in the nature of conspiracy under the provisions of Section 19 of the Criminal Code which provides that, 'If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise and enjoyment of any right or privilege, secured to him by the * * * laws of the United States,' they shall be punished, and they further maintain that injunction will lie to restrain means for promoting such conspiracy. Pettibone vs. United States, 148 U. S. 197; Duplex Co. vs. Deering, 254 U. S. 465. Even so, the thing which is done or is threatened must in itself be unlawful, or, if unlawful, it must be carried out by unlawful means in order to constitute a conspiracy. The thing here charged against the Company was conduct which, under the terms of the Transportation Act and in the light of the decision of the Supreme Court in Pennsylvania Railroad Company vs. Labor Board, supra, was not unlawful either in purpose or in means employed to carry out the purpose. It follows that in their conspiracy charge the complainants are not aided by a statutory right."

8. In deciding and holding that the defendants have not violated, are not violating and threatening to continue violating a positive statutory law, i. e. the Transportation Act of 1920.

9. In deciding and holding that the defendants, Pennsylvania Railroad Company, its officers, defendants herein, and the other individual defendants have not committed violations of the Transporation Act by agreement and co-operation and that such agreement and co-operation did not constitute a conspiracy.

10. In deciding and holding that the acts of the defendants complained of herein did not violate the complainants' civil and statutory rights, and injure and oppress them in the free exercise and enjoyment of such rights.

11. In deciding and holding that the complainants have not sustained and are not sustaining pecuniary losses and other damages by reason of the defendants' unlawful acts for which they have no adequate remedy at law.

12. In deciding and holding that the complainants are not entitled to the injunctive relief and money damages prayed for in the Bill of Complaint herein.

13. In deciding and holding as follows:

"For these several reasons we are constrained to hold with the learned trial Judge (294 Fed. 556 and 296 Fed. 220) that the complainants have not show- rights for the enforcement of which the processes of a court of equity are available."

David Wallerstein, Morris Hillquit, Solicitor- for Complainants.

Endorsements: 3140. Assignments of Error received & filed Sep. 11, 1924. Saunders Lewis, Jr., clerk.

In the United States Circuit Court of Appeal for the Third Circuit, March Term, 1924

No. 3140

Pennsylvania Railroad System and Allied Lines Federation No. 90, Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90, and N. Plummer Good, Individually and as President Railroad System and Allied Lines Federation No. 90 and Member of the Executive Council Thereof; H. A. Bixler, Individually and as Secretary-Treasurer of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council Thereof; Charles Kutz, Walter P. Weller, Raymond J. Dorson, Arthur C. Myer, George W. Woomer, and Alfred J. Burger, Individually and as Members of the Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90; Rome La Fontain, Henry Rothermill, George Cramer, Jacob Kern, and F. M. Keech, Appellants,

vs.

The Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, Elisha Lee, George L. Peck, E. T. Whiter, C. S. Krick, M. W. Clement, T. B. Hamilton, Benjamin McKeen, I. W. Geer, P. F. Smith, Jr., T. H. Davis, W. J. Davis, W. J. Hilton, Charles Mode, J. E. Cavey and C. G. Larson, Appellees

Appeal from the District Court of the United States for the Eastern District of Pennsylvania

Petition for Appeal

Pennsylvania Railroad System and Allied Lines Federation No. 90, Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90 and N. Plummer Good, individually and as President of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council thereof, H. A. Bixler, individually and as Secretary-Treasurer of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council thereof, Charles Kutz, Walter P. Weller, Raymond J. Dorson, Arthur C. Myer, George W. Woomer and Alfred Burger, individually and as members of the Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90, Rome La Fontain, Henry Rothermill, George Cramer, Jacob Kern and F. M. Keech, Appellants, feeling themselves aggrieved by the final Order and Decree of the United States Circuit Court of Appeals for the Third District made and entered the 14th day of July 1924 affirming the final decree of the District Court of the United States for the Eastern District of Pennsylvania made and entered in the said District Court on the 8th day of February 1924 and directing that the Bill filed therein be dismissed, by its Counsel pray an appeal from the said Final Order so entered by said

United States Circuit Court of Appeals for the said Third Circuit to the Supreme Court of the United States. The particulars wherein the Appellants consider the final order of the said Circuit Court of Appeals erroneous are set forth in the Assignments of Errors on file, to which reference is made.

The said Appellants, each and all of them, pray that a transcript of the record, proceedings and papers on which the final order was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

David Wallerstein, Morris Hillquit, Solicitors for All of the Above-named Appellants and Petitioners.

Endorsements: 3140. Petition for Appeal. Received & Filed Sept. 11, 1924. Saunders Lewis, Clerk.

In the United States Circuit Court of Appeal for the Third Circuit, March Term, 1924

No. 3140

Pennsylvania Railroad System and Allied Lines Federation No. 90, Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90, and N. Plummer Good, Individually and as President Railroad System and Allied Lines Federation No. 90 and Member of the Executive Council Thereof; H. A. Bixler, Individually and as Secretary-Treasurer of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council Thereof; Charles Kutz, Walter P. Weller, Raymond J. Dorson, Arthur C. Myer, George W. Woomer, and Alfred J. Burger, Individually and as Members of the Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90; Rome La Fontain, Henry Rothermill, George Cramer, Jacob Kern, and F. M. Keech, Appellants,

vs.

The Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, Elisha Lee, George L. Peck, E. T. Whiter, C. S. Krick, M. W. Clement, T. B. Hamilton, Benjamin McKeen, I. W. Geer, P. F. Smith, Jr., T. H. Davis, W. J. Davis, W. J. Hilton, Charles Mode, J. E. Cavey and C. G. Larson, Appellees

Appeal from the District Court of the United States for the Eastern District of Pennsylvania

In the above entitled cause, the above named Appellants having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final order of the United States Circuit Court of Appeals for the Third Circuit made and entered on the 14th day of July 1924 having also made and filed Assignments of Errors and having in all respects conformed to the statutes and Rules of Court in such cases made and provided;

It is ordered and decreed that the appeal be and the same is hereby allowed as prayed for and made returnable to the October Term of the Supreme Court of the United States, and the Clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings and papers, on which said Order here appealed from was made and entered, to the Supreme Court of the United States.

It is further ordered that a bond of appeal in the sum of Five hundred dollars ($500.00) and conditioned as required by law, be filed within 20 days from the date hereof.

Victor B. Woolley, C. J.

[File endorsement omitted.]

Bond on Appeal for $500—Approved and filed Sept. 16, 1924; omitted in printing

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Citation—In usual form, showing service on Hampton Davis; omitted in printing

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In United States Circuit Court of Appeals

Clerk's Certificate

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original record and proceedings in this Court in the case of: Pennsylvania Railroad System & Allied Lines, et al., Appellants, vs. Pennsylvania Railroad System, et al., Appellees, No. 3140, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this eighteenth Day of September in the year of our Lord one thousand nine hundred and twenty-four and of the Independence of the United States the one hundred and forty-ninth.

Saunders Lewis, Jr., Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal of United States Circuit Court of Appeals, Third Circuit.)

Endorsed on cover: File No. 30,626. U. S. Circuit Court of Appeals, Third Circuit. Term No. 661. Pennsylvania Railroad System and Allied Lines Federation No. 90, Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90, et al., appellants, vs. The Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, et al. Filed September 23, 1924. File No. 30,626.

FILED
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WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States.

October Term, 1924.—No. 661.

PENNSYLVANIA RAILROAD SYSTEM AND ALLIED LINES FEDERATION NO. 90, EXECUTIVE COUNCIL OF PENNSYLVANIA RAILROAD SYSTEM AND ALLIED LINES FEDERATION NO. 90, and N. PLUMMER GOOD, individually and as President of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council thereof, H. A. BIXLER, individually and as Secretary-Treasurer of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council thereof, CHARLES KUTZ, WALTER P. WELLER, RAYMOND J. DORSON, ARTHUR C. MYER, GEORGE W. WOOMER and ALFRED J. BURGER, individually and as members of the Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90, ROME LA FONTAIN, HENRY ROTHERMILL, GEORGE CRAMER, JACOB KERN and F. M. KEECH,

Complainants and Appellants,

—against—

THE PENNSYLVANIA RAILROAD COMPANY, SAMUEL REA, W. W. ATTERBURY, ELISHA LEE, GEORGE L. PECK, E. T. WHITER, C. S. KRICK, M. W. CLEMENT, T. B. HAMILTON, BENJAMIN McKEEN, I. W. GEER, P. F. SMITH, JR., T. H. DAVIS, W. J. HILTON, CHARLES MODE, J. E. CAVEY and C. G. LARSON,

Respondents and Appellees.

BRIEF FOR APPELLANTS.

DAVID WALLERSTEIN,
MORRIS HILLQUIT,
Counsel for Appellants.

Court Press, N. Y. C. Bowling Green, 2820

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1924—No. 661.

PENNSYLVANIA RAILROAD SYSTEM AND ALLIED LINES FEDERATION NO. 90, EXECUTIVE COUNCIL OF PENNSYLVANIA RAILROAD SYSTEM AND ALLIED LINES FEDERATION NO. 90, and N. PLUMMER GOOD, individually and as President of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council thereof, H. A. BIXLER, individually and as Secretary-Treasurer of Pennsylvania Railroad System and Allied Lines Federation No. 90 and member of the Executive Council thereof, CHARLES KUTZ, WALTER P. WELLER, RAYMOND J. DORSON, ARTHUR C. MYER, GEORGE W. WOOMER and ALFRED J. BURGER, individually and as member of the Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90, ROME LA FONTAIN, HENRY ROTHERMILL, GEORGE CRAMER, JACOB KERN and F. M. KEECH,

Complainants and Appellants,

—against—

THE PENNSYLVANIA RAILROAD COMPANY, SAMUEL REA, W. W. ATTERBURY, ELISHA LEE, GEORGE L. PECK, E. T. WHITER, C. A. KRICK, M. W. CLEMENT, T. B. HAMILTON, BENJAMIN MCKEEN, I. W. GEER, P. F. SMITH, JR., T. H. DAVIS, W. J. HILTON, CHARLES MODE, J. E. CAVEY and C. G. LARSON,

Respondents and Appellees.

Statement of the Case.

This is an appeal from a decree of the United States Circuit Court of Appeals of the Third District as of March Term, 1924, No. 3118, entered on the 14th day

of July, 1924, which affirmed an order of the District Court of the United States for the Eastern District of Pennsylvania entered in the office of the Clerk of said Court on the 4th day of February, 1924, dismissing the bill of complaint herein and awarding the defendants the costs of the action.

The action was begun by the filing of a bill in equity, and issue was joined by the service and filing of an answer in behalf of all of the defendants. On the trial of the case, after the complainants had presented the proofs, the defendants moved to dismiss the bill as to all of the defendants, which motion was granted and a decree entered thereon.

The bill alleges that the defendants are engaged in a conspiracy to violate and that they are violating the provisions of Title III of the Transportation Act of 1920 by refusing to confer with their employees on disputes involving wages and working conditions, and to submit such disputes to the Railroad Labor Board, and prays for a decree enjoining such conspiracy and violation of the law.

The bill also alleges that the defendant Pennsylvania Railroad Company has paid various classes of employees represented by the plaintiffs wages below those established by law and by contract. Such employees seek to recover the difference between the wages paid them and the wages to which they claim to be entitled and ask for an accounting to ascertain such amounts.

The answer denies the alleged conspiracy; denies the alleged duty of carriers to confer with their employees or to submit resulting disputes between them and their

employees to the Railroad Labor Board. It also denies that the employees in whose behalf the suit is brought are or were entitled by law or contract to wages in excess of those paid to them.

The main facts in the case are as follows:

Prior to December 28, 1917, a system of railroads extending over twelve states and the District of Columbia was operated as the Pennsylvania System. The Pennsylvania System employed a large number of men in shop or mechanical work in and about the repair and maintenance of locomotives, cars and other equipments. The said employees were engaged in six different crafts, *i. e.*, machinists, electricians, boiler makers, blacksmiths, sheet metal workers and carmen. Within each of such crafts there was a large national labor union. These labor unions represented a combined membership of about 300,000, many of the members being employed in shop craft work on the Pennsylvania Railroad System. The Company, however, discouraged trade unions among its employees in the shop and mechanical departments and refused to recognize or deal with them, though it did recognize and deal with certain other labor organizations, such as the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and the Brotherhood of Railway Trainmen.

On December 28, 1917, the President of the United States, under the authority of the Act of Congress of August 29, 1916, took over the railroads of the United States, including the Pennsylvania System, and operated

them through the United States Railroad Administration and the Director General of Railroads. On February 21, 1918, the United States Railroad Administration issued an order, known as General Order No. 8, which prohibited discrimination against employees because of membership or non-membership in labor organizations. In consequence of this order, the local unions and lodges of the national organizations of mechanical and shop craft employees became active, and a large number of the employees on the Pennsylvania System became members of such organizations. By July 1, 1918, the number of local unions, composed of members engaged in shop craft work on the Pennsylvania System had arisen to 170, with a combined membership of about 30,000, a little less than one-half of the entire number of shop craft employees on the System.

On the 8th day of July, 1918, a convention was held in Altoona, composed of 171 delegates, representing all local lodges or unions of shop craft workers employed on the Pennsylvania System. As a result of this convention, there was formed the Pennsylvania Railroad System and Allied Lines Federation No. 90, one of the complainants in the bill. The preamble and the platform of the convention set forth the purposes for which the Federation was formed, such purposes being mainly the procurement of a minimum wage and the improvement of working conditions in the shops. At the same time, a constitution and by-laws were adopted, which provided that the business of the Federation should be managed by a president and a secretary-treasurer and an executive council, which consisted of these two officers

and six other members, *i. e.*, the respective chairmen of the six affiliated crafts composing the Federation. Among other things, the constitution and by-laws contained provisions against strikes by employees in any of the crafts, unless authorized by the Federation on a referendum vote of the membership and sanctioned by the Railway Employees' Department of the American Federation of Labor, with which System Federation No. 90 and its component crafts were affiliated.

Provision was also made for the maintenance of the organization by the payment of five cents per month for each member of the Federation as a capita tax or dues. By the beginning of the year 1921, Federation No. 90, composed exclusively of employees engaged in shop craft work on the Pennsylvania Railroad System, had a membership exceeding 60,000, almost 90% of the total number of shop craft employees on the System. The authorized representatives of Federation No. 90, ever since its organization, negotiated for and on behalf of its members with the United States Railroad Administration and with the Pennsylvania Railroad Company after Federal control of the railroads ceased up to and including May 24, 1921. It was recognized as the authorized spokesman of the shop craft employees of the Pennsylvania Railroad Company by the Railroad Labor Board.

System Federation No. 90 was, as just detailed, organized about July 11, 1918. Prior to that time, on the 25th of May, 1918, the United States Railroad Administration issued General Order No. 27 revising and increasing the prevailing rate of wages of shop craft employees and fixing uniform rates of wages for them

throughout the country. On the 25th of July, 1918, Supplement No. 4 to General Order No. 27 was issued, establishing definite and uniform classification of shop craft employees on the railroads under Federal control. In December, 1918, as the result of the numerous complaints of shop craft employees, the United States Railroad Administration ordered a vote to be taken among them on the question of continuing the system of "piece work." About 98% of all the employees expressed their opposition to piece work, which was thereupon discontinued by the Railroad Administration in February, 1919.

Thereafter, the United States Railroad Administration entered into an agreement, in writing, with the employees represented by the Railway Employees' Department of the American Federation of Labor and its affiliated organizations of the Mechanical Section (including System Federation No. 90). This agreement, which is commonly known as the "National Agreement" and became effective on October 20, 1919, granted the employees a wage increase of four cents per hour and continued in force the classification of employees in shop craft work. The agreement provided that eight hours should constitute a day's work and that all employees should be paid on an hourly basis. It contained provisions for adjusting the grievances of employees and protected them against arbitrary dismissals. The National Agreement specifically recognized the right of Labor Organizations to represent their members in dealings with the carriers and expressly stipulated that the carrier would not discriminate against any committee-

men who represented their employees. It also definitely established and defined the "seniority rights" of the employees. The National Agreement and the orders of the United States Railroad Administration, which have been referred to, were applicable to the Pennsylvania Railroad System from their respective dates and were all in full force on the 28th day of February, 1920, when the Transportation Act became a law.

About February 1, 1920, and prior to the enactment of the Transportation Act, the shop craft employees, as well as other classes of railroad employees, presented to the United States Railroad Administration a request for wage increases and for certain modifications of the National Agreement concerning working conditions. The request was so presented by the recognized labor unions, including System Federation No. 90. No action was taken, but the President of the United States assured the representatives of railroad workers' organizations that the Administration would use its influence for the establishment of appropriate legal machinery to pass upon the requests and to deal in the future with all questions and disputes between carriers and their employees.

On the 23rd of February, 1920, Congress passed what is known as the Transportation Act, which was signed by the President of the United States, and became a law on February 28, 1920. Under the terms of this Act, Federal control of the railroad terminated on March 1, 1920, and on that day all of the railroads, including the Pennsylvania Railroad System, were returned to the ownership and operation of their former owners.

Title III of the Transportation Act relating to "Disputes between Carriers and their Employees and Subordinate Officials," directs all carriers and their employees to consider and, if possible, decide in conference all disputes which may lead to an interruption to the operation of the carrier. If such disputes are not decided by such conference, they are to be referred to railroad boards of labor adjustment for hearing and decision, provided they do not involve questions of wages.

The Act also creates a "Railroad Labor Board" composed of nine members, three representing the employees and subordinate officials, three representing the carriers and three constituting "the public group," all appointed by the President.

The Labor Board thus constituted is given jurisdiction of any dispute involving grievances, rules or working conditions in respect to which any Adjustment Board certified to that it had failed, or would fail, to reach a decision within a reasonable time, or in respect of which the Labor Board determined that the Adjustment Board had so failed or was not using diligence. In the event that Adjustment Boards were not organized, the Act under Section 307 (a) provides for the direct jurisdiction of the Labor Board over the disputes in the circumstances mentioned in the Section.

Under Section 307 (b) jurisdiction over wage disputes is directly conferred upon the Labor Board.

The Act provides that decision of the Labor Board should establish wages and standards of conditions deemed by such Board to be just and reasonable. Section 307 (d) defines specifically the elements and fac-

tors to be considered in determining justness and reasonableness.

Section 308 (4) reads: "The Labor Board may make regulations necessary for the efficient execution of the functions vested in it by this Title (*i. e.*, Title III)."

For the convenience of the Court the entire text of Title III of the Transportation Act is reprinted on page of this brief.

No Adjustment Boards were ever established upon the Pennsylvania Railroad System.

With his signing of the Transportation Act, the President of the United States addressed a letter to the executive officers of the principal organizations of railroad workers in the United States, including the Chairman of the Railway Employees' Department of the American Federation of Labor (of which System Federation No. 90 was a part). This letter is contained in the record (Record, pp. 29 and 30). Its purport was to inform the representatives of the Labor Organizations why the President had not acted upon their pending claim for wage increase and to assure them that the Transportation Act (by Title III) had provided a method which would secure a careful and just consideration of the interests of both carriers and employees, and a proper determination of any controversy between them. The letter expressly stated that "Section 301 of the Bill evidently contemplates that the carriers and employees should, as suggested by you (*i. e.*, the representatives of the labor organizations) select representatives, who will thus constitute a bi-partisan board for the purpose of

atttempting by conference to agree upon a solution of this wage problem."

Immediately upon the appointment of the Railroad Labor Board (about April 15, 1920) it took charge of the disputes as to wages and working conditions which were then pending. Hearings were had before the Board, in which both the carriers and the organizations of employees participated; and on the 20th of July, 1920, the Labor Board rendered what is known as Decision No. 2. This decision awarded to the employees of the railroads engaged in shop and mechanical work, including those employed on the Pennsylvania Railroad, an increase in wages of 13 cents per hour. Subsequently, on the first day of June, 1921, the Labor Board by its Decision No. 147, reduced the wages of such employees by eight cents an hour. Both Decision No. 2 and Decision No. 147 were fully accepted by the railroads and their employees engaged in shop craft work, including the Pennsylvania Railroad Company, System Federation No. 90, and the members thereof.

At the time Decision No. 2 was rendered, there were also pending before the Railroad Labor Board disputes involving rules and working conditions. Concerning these, the Labor Board found that their investigation and consideration demanded more time. The Board, therefore, did not then decide them but did declare that as the basis of Decision No. 2 it assumed the continuance in full force and effect of the rules and working conditions in force under the authority of the United States Railroad Administration and that pending a determination no changes should be made therein except by agree-

ment between the carrier and the employees concerned. It also announced that further hearings would be held on these disputes.

In August, 1920, N. P. Good, one of the complanants in this case and President of System Federation No. 90, telegraphed to the general managers of the different regions of the Pennsylvania Railroad System to the effect that he had been informed that it was the intention of the Pennsylvania Railroad to introduce a piece work, premium or bonus system on September 1, 1920. He asserted that such action would be in violation of the National Agreement and of Decision No. 2, and requested the General Managers to advise him whether their intention was as reported.

On September 1, 1920, Mr. Good received replies from the various managers, uniform in tenor, the purport of which was that the railroad representatives had advised the Labor Board that the railroads would comply with the decision of the Board in regard to working conditions pending a hearing; that Decision No. 2 provided that pending the presentation of the questions involved in the dispute, no changes should be made except by agreement between the carriers and employees concerned. The replies ended as follows: "We do not contemplate any change pending the decision of the United States Railroad Labor Board, unless in the meantime, our officers, *and such employees as may be concerned* may, by agreement, desire to do so."

In December, 1920, the Labor Board took up the consideration of the undecided portion of the dispute referred to in Decision No. 2, and on the 14th day of

April, 1921, it published and promulgated Decision No. 119. This decision declared that the compliance, by both carriers and employees, with Section 301 of the Transportation Act had been perfunctory and called upon both sides to make *bona fide* efforts to compose their disputes in conference.

The main features of Decision No. 119 were substantially as follows:

1. It declared that the rules, working conditions and agreements in force under the authority of the United States Railroad Administration would cease and determine on July 1, 1921.

2. It called upon the officers and *System Organizations of employees* of each carrier to designate and authorize representatives to confer and decide as much of the dispute as was possible.

3. It reserves the right to terminate the existing working rules prior to July 1, 1921, if it should appear that any class of employees was unduly delaying negotiations. It also reserved the right to continue the status beyond July 1, 1921, if delay was caused by the carriers.

4. It provided that the rules governing such conferences, should be consistent with the principles set forth in "Exhibit B" attached to the decision.

Exhibit B is set forth in full in the record (Record, pp. 45 to 48).

Attention is particularly called to "Principles 7 and 15," which are as follows:

> "7. The right of employees to be consulted prior to a decision of the management adversely affecting their wages or working conditions shall be agreed to by the management. The right of participation shall be deemed adequately complied with, if and when the representatives of *a majority of the employees of each of the several classes directly affected* shall have conferred with the management."
>
> "15. The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. *Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class.* No such agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice."

In 1920, there were actually engaged in shop craft work on the Pennsylvania Railroad about 70,000 men and the membership of System Federation No. 90 was about 63,000. In the early part of 1920, the Pennsylvania Railroad had laid off or furloughed very nearly 50% of its shop craft employees on account of the business depression existing at that time.

The learned Circuit Court of Appeals entirely misapprehends the nature and status of the Company's em-

ployees so laid off or furloughed and all through its opinion refers to them as "employees on strike." The furloughed employees of the Company were not on strike but were temporarily "laid off" by the Company in pursuit of its policy to decrease its operating forces during the period or seasons of business depression. Such furloughed workers retained their status as employees of the Company under an agreement that they would be re-employed in the order of their seniority in service as soon as the Company would again increase its working forces.

This misapprehension on the part of the Court leads it to erroneous conclusions of a serious character, when it states in its opinion that the members of System Federation No. 90 who voted on the latter's ballots for the choice of representatives as hereinafter set forth, embraced "men at work and men on strike" and later in the opinion when the learned Court assumes that the complainants base one of their claims herein on the alleged refusal of the Company to re-employ "furloughed employees, that is, employees on strike" unless they waived certain rights under the Transportation Act.

It must be borne in mind that after the termination of Federal control, and prior to the 24th day of May, 1921, the Pennsylvania Railroad Company had, on several occasions, called in the aid of System Federation No. 90 to settle local disputes with its shop craft employees (Record, p. 133 *et seq.*). It must be also borne in mind that in all disputes pending between the Pennsylvania Railroad Company and its shop craft employees prior to May 24, 1921, the shop craft employees had been repre-

sented by System Federation No. 90, and that when those disputes were carried to the Railroad Labor Board, the position of the shop craft employees had been presented by System Federation No. 90 as their representatives.

On the 24th day of May, 1921, a meeting was held at the office of the Pennsylvania Railroad Company in Philadelphia. There were present at this meeting R. V. Massey, Asst. Gen. Manager of the Eastern Region of the Pennsylvania Railroad; a large number of other officials of the Pennsylvania Railroad and N. P. Good, President—System Federation No. 90, and six chairmen of the respective shop craft organizations which composed the Executive Committee of System Federation No. 90. The representatives of System Federation No. 90 had appeared for the purpose of discussing the pending disputes between the Railroad Company and its employees in accordance with Decision No. 119 of the Railroad Labor Board. They were told by the railroad officials that the railroad did not know whether System Federation No. 90 represented a majority of the shop craft employees and were also informed that the Company would deal with an organization of the shop craft employees only through representatives actually in the employ of the Pennsylvania Railroad Company and at work at the time.

The railroad officials exhibited to the representatives of System Federation No. 90, a draft form of a proposed ballot which it intended to submit to its shop craft employees for the selection of such representatives. It appeared from this ballot that the Railroad Company

proposed to divide the shop craft employees into 276 separate committees, *i. e.*, 6 craft committees within each of 46 "Superintendents' Divisions," the employees in each case being called upon to select their own representatives whose number was arbitrarily fixed by the Company at three. It also appeared that under the railroad's plan the employees who had been temporarily laid off on account of depression were not to be permitted to vote but that the voting was to be confined to those actually at work at the time of the election. The form of the ballot presented by the Company's representatives and the entire minutes of this meeting of May 24th are contained in the record (Plaintiff's Exhibit No. 3, Record, pp. 307 to 402). The ballot also prescribes a number of rules with respect to the form, framework and functions of a new organization of employees which was to issue from such election. Ballots when cast were to be returned to the Superintendent of the Company.

The representatives of System Federation No. 90 maintained that the proposed ballot was in violation of Decision No. 119, and that all elections of representatives of employees should be conducted by the employees themselves and not by the employer. They requested that the Company should either modify the proposed ballot so as to permit the employees to vote for an organization, or delay taking a ballot and submit the question of the method of choosing representatives to the Railroad Labor Board. The Company refused all requests of System Federation No. 90, which thereupon instructed

its members to disregard the ballot submitted by the Pennsylvania Railroad.

Notwithstanding the protest of System Federation No. 90, the Company proceeded to submit its ballot, upon which only men actually at work were permitted to vote.

Out of a total of 33,000 employees, eligible to vote, according to the Company's rule of eligibility, only 5,236 exercised such right. Of this number 742 cast blank ballots; 760 named System Federation No. 90 as representative, while only 3,480 ballots designated individual employees as required by the rules of the Company. System Federation No. 90 also submitted a ballot to its members, both those who were at work and those who were temporarily laid off. On this ballot 37,245 employees of the Pennsylvania Railroad cast their votes. All but seven of these votes were cast for System Federation No. 90 as the representatives of the shop craft employees. This vote of its shop craft employees was disregarded by the Railroad Company.

In the Southwestern Region, established by the Company, the employees designated as representatives on the Company's ballot, informed the Company that they would not act as such representatives, as the use of their name was unauthorized and that they recognized System Federation No. 90 as the duly authorized representative. Nevertheless, the railroad proceeded to establish rules, regulations and working conditions for the employees in this region and promulgated an "agreement," which was not signed by any representative of the employees.

As part of the scheme which was presented by the

Railroad Company at the meeting on May 24th, 1921, it proceeded to establish local Craft Committees, Division Committees and a Regional General Committee. The full details of this organization are contained in the testimony of Robert V. Massey, Gen. Mgr.—Eastern Division, Pennsylvania Railroad (Record, pp. 173 to 190).

By-Laws were adopted by the alleged organizations thus established by the Company which carried out the latter's scheme. The said By-Laws provided for the establishment of "Joint Regional Committees" to be made up of an equal number of officers of the Company and the alleged representatives of the employees, which Joint Regional Committees should be the final tribunal for the decision of controversies. In such Committees the management of the railroad was given equal voting power with the alleged representatives of the employees, and a two-thirds vote was required to make a decision effective.

No machinery was set up for settling disputes in the event that a decision was not reached in accordance with the so-called By-Laws. Mr. Massey testified (Record, p. 181) that if a decision was not reached at a meeting of the Joint Reviewing Committee, as it was termed, a decision had to be reached at the next meeting. If a decision was not then reached an arrangement would be made between the employees and the Company "where it could be arbitrated or something of the kind." No provision was made for a reference to the Railroad Labor Board and the provisions of Title III were entirely ignored.

After the adoption of the By-Laws and the Company's

scheme of organization, the Company met with the persons alleged to constitute the Regional General Committee under such scheme, and such Committee entered into an alleged agreement with the Company fixing the wages, rules, regulations, terms and conditions of work of all the employees engaged in shop craft work on the road. As the result of these agreements, wages were reduced, and rules, regulations, terms and conditions of work substantially inferior to those fixed by the National Agreements and by the Railroad Labor Board were established. All expense of the election and the compensation and expenses of the persons alleged to have been elected by the employees under the railroad's scheme of organization were paid by the Company.

Under the United States Railroad Administration, and also after Federal control of the railroad ceased, there had been a rule granting leave of absence and free transportation to officers of organizations and employees representing the members of the organization and to any employees representing other employees. The Company itself had recognized this rule and N. Plummer Good and other members of the Executive Committee of System Federation No. 90 were at the time of the meeting of May 24th, 1921, and subsequently, on such leave of absence. On the 25th day of July, 1921, the Company notified the officers and representatives of System Federation No. 90, who were thus on furlough, that their furloughs were cancelled and that all were to return to work under penalty of dismissal from service. This summary dismissal was also in violation of the rule theretofore established by the Railroad Administration

by which no employee in the service of a railroad, thirty days or longer, should be discharged for any cause without being given an investigation. The men so notified disregarded the order of the Company and were summarily dismissed.

After making the alleged agreement with the so-called representatives of the shop craft employees the Company began to increase its active force (which as before stated had been reduced almost 50 per cent.) by ordering furloughed employees back to work. In many instances the classification of the returned employees was changed and their wages reduced. All furloughed employees ordered to return to work were requested to sign an agreement as follows:

"PENNSYLVANIA SYSTEM
Altoona Works
Altoona, Pa.....

Mr. P. F. Smith, Jr.,
Works Manager.

I have read the Schedule of Regulations adopted by the Management and representatives of the employees of Altoona Works and put into effect July 1st, 1921, by notice of the Works Manager, and am entirely satisfied to re-enter the service under the conditions laid down in said schedule of regulations.

.....Name

.....Address."

Any furloughed employee, who refused to sign as requested, was refused re-employment. About 5,000 of such furloughed employees were thus refused employment. The plaintiff, La Fontain, is one of such employees, and sues in behalf of himself and all others similarly situated.

At the same time a large number of employees actually at work were requested by the Railroad Company to sign a paper similar to that just mentioned. Upon refusal so to sign they were discharged. The plaintiff, George Cramer, is one of such persons and likewise sues in behalf of himself and all others similarly situated.

Certain of the employees of the Pennsylvania Railroad Company, actually engaged in work, fearing loss of employment and knowing that failure to sign the agreement heretofore mentioned would result in dismissal, signed such agreement. The plaintiff, Henry Rothermill, is one of such persons.

The scheme of organization established by the Pennsylvania Railroad provided for annual elections. No such election was held, however, in 1922, but one was held in 1923. There is no evidence in the case to show how many of the employees of the Pennsylvania Railroad actually at work voted at that election.

After the Pennsylvania Railroad had prepared the ballots, as already related, and had refused to submit the question of the proper form of ballot to the Railroad Labor Board, System Federation No. 90 and the Railway Employees' Department of the American Federation of Labor made an *ex parte* submission of dispute to the

Railroad Labor Board, which held hearings on the controversy. The employees were represented by System Federation No. 90 and by the Railway Employees' Department of the American Federation of Labor and the Pennsylvania Railroad was represented at these hearings by its officers. After a full hearing on both sides and on the 26th of July, 1921, the Railroad Labor Board rendered Decision No. 218. Parts of this Decision are set out in the record (Record, pp. 71 to 78). This decision held substantially that the Railroad Company had no right to assume control of the selection of employees; that it was not justified in refusing the request of the employees to place on the ticket the name of System Federation No. 90; that the employees had the right to vote for representatives who were not employees of the carrier; that all that had been asked was to place the name of the employees' organization on the ballot which would have resulted "as the carrier well knew, in the employees being represented by the officers of the organization who are employees of the carrier;" that the carrier had no right to divide the System into Regions and that the Transportation Act contemplated that the employees directly interested on an entire system shall select representatives; that the ballot submitted by System Federation No. 90 was likewise improper because it did not provide for individual representation. The Labor Board therefore declared both elections invalid and ordered a new election to be held. The decision extended the right to vote to employees who had been laid off on furlough and were entitled to return to the service under seniority rules; it prescribed a form of

ballot; directed that the vote should be taken by crafts and that a majority of each of the respective crafts should have the right to determine by whom they should be represented and that the employees should not be denied the right to name an organization as their representative or to choose an individual who was not an employee of the carrier; it provided for methods of distribution of ballots and counting the vote.

The Company refused to accept Decision No. 218 or to carry out any of its provisions; and refused to cancel the election held by it. Upon this refusal the Board cited the Railroad Company to appear before it at a hearing to be held on October 20th, 1921, in order to determine whether Decision No. 218 had been violated by the Company. A hearing was held; the Railroad Company participated in it, contending that the Labor Board had no jurisdiction over the dispute and no right to determine the manner in which the Company's employees should elect their representatives. After the hearing and before any decision by the Railroad Labor Board the Company secured an injunction from the District Court of the United States for the Northern District of Illinois, enjoining and restraining the Board from proceeding to render a decision and from making publication in such a proceeding. On appeal by the Labor Board to the United States Circuit Court of Appeals, the injunction was vacated. The Company thereupon took an appeal to this Court, which, on the 19th day of February, 1923, affirmed the decision of the Circuit Court of Appeals. The Railroad Labor Board then, on its own motion, again requested the Company

to comply with its Decision No. 218. On the Company's refusal the Railroad Labor Board, on June 12, 1923, rendered Decision 1829, in which it held that the Company had denied to its shop employees essential rights as laboring men to which Congress had declared them entitled (Decision No. 1829: Record, p. 82).

As already mentioned, Decision No. 218 was rendered on the 26th day of July, 1921. On the 3rd day of November, 1921, System Federation No. 90, acting on behalf of its members, submitted to the latter a vote on the following question, to-wit:

> "In the event the Pennsylvania Railroad System refuses to comply with Decision No. 218 of the United States Railroad Labor Board, shall a strike be authorized on a date to be later set?"

An overwhelming majority of the members of System Federation No. 90 answered the question in the affirmative. The vote and action of the members were approved by the Employees' Department of the American Federation of Labor and by International organizations affiliated with it, in accordance with the Constitution and By-Laws of System Federation No. 90. On the first day of July, 1922, System Federation No. 90 authorized its members to cease working for the Pennsylvania Railroad until the Company would comply with the Transportation Act and the decision of the Labor Board. A very large number of members of System Federation No. 90 thereupon went on a "strike," in order to enforce compliance by the Pennsylvania

Railroad with the provisions of the Transportation Act and the decision of the Labor Board.

On March 17, 1923, immediately after the decision of the Supreme Court of the United States affirming the vacation of the injunction which the Pennsylvania Railroad had obtained against the Railroad Labor Board, System Federation No. 90 formally informed the Railroad Company of the readiness of its members to resume their work upon the terms and conditions established by the Railroad Labor Board, under the Transportation Act. The Railroad Company and its officers and managers refused to permit its employees to resume work upon such conditions. The plaintiff, Jacob Kern, is one of the employees of the Company engaged in shop craft work who thus suspended work, and sues herein in his own behalf and in behalf of all other employees similarily situated.

A large number of the employees, members of Federation No. 90, did not avail themselves of the authority to suspend work, but continued at work for the Company under the wages, rules and conditions of work established by the Company under its unlawful alleged agreement with the representatives of the employees.

All of the employees of the Company, members of System Federation No. 90, who worked for the Company between July 1, 1921, and July 1, 1922, received the rate of wages and were compelled to work under the rules and conditions of work established by the Company under the alleged agreement already referred to. These employees contend that they are entitled to be paid by the Company the difference between the

amounts actually received by them in wages and the amount which they would have received under the rate of wages in force on the first day of July, 1921, as established by the United States Railroad Administration and modified by the Railroad Labor Board through the methods and in the manner prescribed by the Transportation Act. The plaintiffs Henry Rothermill and Jacob Kern are such employees and sue herein on behalf of themselves and all others similarly situated.

Likewise, it is contended that all employees of the Pennsylvania Railroad, members of System Federation No. 90, who worked for the said Company after the first day of July, 1921, and have continued to work to the present time were entitled to receive the wages fixed by the United States Railroad Administration as modified by the Railroad Labor Board, and that they are thus entitled to recover from the Pennsylvania Railroad the difference between the wages received by them under the alleged agreement established by the Company and the rate of wages established by the Railroad Administration and the Railroad Labor Board. The plaintiff Keech is such an employee and has brought this suit on behalf of himself and all others similarly situated.

On the facts above summarized, the complainants pray for a decree in effect restraining the defendant Pennsylvania Railroad Company from enforcing the provisions of the alleged agreement made between it and the organizations of employees of its own creation, with respect to wages and working rules; from enforcing any changes in the wages and working rules as they

existed on June 30th, 1921; from continuing to deal with the persons alleged to have been chosen on the "company ballots" as representatives of the employees engaged in mechanical work; from financing, interfering with, directing and controlling alleged organizations of the Company's employees for the purposes set forth in the Transportation Act, and from refusing to confer and deal with System Federation No. 90 as the organization representing the great majority of the Company's employees engaged in such mechanical work.

The complainants also ask for a decree ordering that an account be taken of all the damages sustained by members of System Federation No. 90, and other shop craft employees of the Company in whose behalf this action is brought. The furloughed employees who were refused re-employment in accordance with their seniority rights, and the employees who were discharged by the Company for refusing to waive their rights under the Transportation Act, seek to recover damages for loss of employment, and the Company employees who were compelled by the Company to accept reduced wages under the terms of the alleged agreement with the "company unions," are suing herein for the difference between such wages and the wages in force on June 30, 1921.

TRANSPORTATION ACT.

Title III—Disputes Between Carriers and Their Employees and Subordinate Officials.

Sec. 300. When used in this title:

(1) The term "carrier" includes any express com-

pany, sleeping car company, and any carrier by railroad, subject to the Interstate Commerce Act, except a street, interurban or suburban electric railway not operating as a part of a general steam railroad system of transportation:

(2) The term "Adjustment Board" means any Railroad Board of Labor Adjustment established under Section 302;

(3) The term "Labor Board" means the Railroad Labor Board;

(4) The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation; and

(5) The term "subordinate official" includes officials of carriers of such class or rank as the Commission shall designate by regulation formulated and issued after such notice and hearing as the Commission may prescribe, to the carriers, and employees and subordinate officials of carriers, and organizations thereof, directly to be affected by such regulations.

Sec. 301. "It *shall* be the duty of all carriers and their officers, employees, and agents to exert every rea-

sonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes *shall* be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it *shall* be referred by the parties thereto to the board which under the provisions of this title is authorized to hear and decide such dispute."

Sec. 302. Railroad Boards of Labor Adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate officials of carriers, or organization or group of organizations thereof.

Sec. 303. Each such Adjustment Board shall, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon the written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, (3) upon the Adjustment Board's own motion, or (4) upon the request of the Labor Board whenever such board is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving

only grievances, rules, or working conditions, not decided as provided in section 301, between the carrier and its employees or subordinate officials, who are, or any organization thereof which is, in accordance with the provisions of Section 302, represented upon any such Adjustment Board.

Sec. 304. There is hereby established a board to be known as the "Railroad Labor Board" and to be composed of nine members as follows:

(1) Three members constituting the labor group, representing the employees and subordinate officials of the carriers, to be appointed by the President, by and with the advice and consent of the Senate from not less than six nominees whose nominations shall be made and offered by such employees in such manner as the Commission shall by regulation prescribe

(2) Three members, constituting the management group, representing the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by the carriers in such manner as the Commission shall by regulation prescribe; and

(3) Three members, constituting the public group, representing the public, to be appointed directly by the President, by and with the advice and consent of the Senate.

Any vacancy on the Labor Board shall be filled in the same manner as the original appointment.

Sec. 305. If either the employees or the carriers fail to make nominations and offer nominees in accordance with the regulations of the Commission, as provided in paragraphs (1) and (2) of Section 304, within thirty days after the passage of this Act in case of any original appointment to the office of member of the Labor Board, or in case of a vacancy in any such office within fifteen days after such vacancy occurs, the President shall thereupon directly make the appointment, by and with the advice and consent of the Senate. In making any such appointment the President shall, as far as he deems it practicable, select an individual associated in interest with the carriers or employees thereof, which ever he is to represent.

Sec. 306. (a) Any member of the Labor Board who during his term of office is an active member or in the employ of or holds any office in any organization of employees or subordinate officials, or any carrier, or owns any stock or bond thereof, or is pecuniarily interested therein, shall at once become ineligible for further membership upon the Labor Board; but no such member is required to relinquish honorary membership in, or his rights in any insurance or pension or other benefit fund maintained by, any organization of employees or subordinate officials or by a carrier.

(b) Of the original members of the Labor Board, one from each group shall be appointed for a term of three years, one for two years, and one for one year. Their successors shall hold office for terms of five years, except that any member appointed to fill a vacancy shall

be appointed only for the unexpired term of the member whom he succeeds. Each member shall receive from the United States an annual salary of $10,000. A member may be removed by the President for neglect of duty or malfeasance in office, but for no other cause.

Sec. 307. (a) The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions, in respect to which any Adjustment Board certifies to the Labor Board that in its opinion the Adjustment Board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof. In case the appropriate Adjustment Board is not organized under the provisions of section 302, the Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions which is not decided as provided in section 301 and which such Adjustment Board would be required to receive for hearing and decision under the provisions of section 303.

(b) The Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, all disputes with respect to the wages or salaries of employees or subordinate officials of carriers, not decided as provided in section 301. The Labor Board may upon its own motion within ten days after the decision, in accordance with the provisons of section 301 of any dispute with respect to wages or salaries of employees or subordinate officials of carriers, suspend the operation of such decision if the Labor Board is of the opinion that the decision involves such an increase in wages or salaries as will be likely to necessitate a substantial readjustment of the rates of any carrier. The Labor Board shall hear any decision so suspended and as soon as practicable and with due diligence decide to affirm or modify such suspended decision.

(c) A decision by the Labor Board under the provisions of paragraphs (a) or (b) of this section shall require the concurrence therein of at least 5 of the 9 members of the Labor Board; *Provided*, That in case of any decision under paragraph (b), at least one of the representatives of the public shall concur in such deci-

sion. All decisions of the Labor Board shall be entered upon the records of the board and copies thereof, together with such statement of facts bearing thereon as the board may deem proper, shall be immediately communicated to the parties to the dispute, the President, each Adjustent Board, and the Commission, and shall be given further publicity in such manner as the Labor Board may determine.

(d) All the decisions of the Labor Board in respect to wages or salaries and of the Labor Board or an Adjustment Board in respect to working conditions of employees or subordinate officials of carriers shall establish rates of wages and salaries and standards of working conditions which in the opinion of the board are just and reasonable. In determining the justness and reasonableness of such wages and salaries or working condition the board shall, so far as applicable, take into consideration among other relevant circumstances:

(1) The scales of wages paid for similar kinds of work in other industries;

(2) The relation between wages and the cost of living;

(3) The hazards of the employment;

(4) The training and skill required;

(5) The degree of responsibility;

(6) The character and regularity of the employment; and

(7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

Sec. 308. The Labor Board——

(1) Shall elect a chairman by majority vote of its members;

(2) Shall maintain central offices in Chicago, Illinois, but the Labor Board may, whenever it deems it necessary, meet at such other place as it may determine;

(3) Shall investigate and study the relations between carriers and their employees particularly questions relating to wages, hours of labor, and other conditions of employment and the respective privileges, rights and duties of carriers and employees, and shall gather, compile, classify, digest, and publish, from time to time, data and information relating to such questions to the end that the Labor Board may be properly equipped to perform its duties under this title and that the members of the Adjustment Boards and the public may be properly informed;

(4) May make regulations necessary for the efficient execution of the functions vested in it by this title; and

(5) Shall at least annually collect and publish the decisions and regulations of the Labor Board and the Adjustment Boards and all court and administrative decisions and regulations of the Commission in respect to this title, together with a cumulative index-digest thereof.

Sec. 309 Any party to any dispute to be considered by an Adjustment Board or by the Labor Board shall be entitled to a hearing either in person or by counsel.

Sec. 310. (a) For the efficient administration of the functions vested in the Labor Board by this title, any member thereof may require, by subpoena issued and signed by himself, the attendance of any witness and the production of any book, paper, document, or other evidence from any place in the United States at any designated place of hearing, and the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed to by the deponent. Any member of the Labor Board may administer oaths and examine any witness. Any witness summoned before the board and any witness whose deposition is taken shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) In case of failure to comply with any subpoena or in case of the contumacy of any witness appearing before the Labor Board, the board may invoke the aid of any United States district court. Such court may thereupon order the witness to comply with the requirements of such subpoena, or to give evidence touching the matter in question, as the case may be. Any failure to obey such order may be punished by such court as a contempt thereof.

(c) No person shall be excused from so attending

and testifying or deposing, nor from so producing any book, paper, document, or other evidence on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, as to which obedience to a subpoena and under oath, he may so testify or produce evidence, documentary or otherwise. But no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 311. (a) When necessary to the efficient administration of the functions vested in the Labor Board by this title, any member, officer, employee, or agent thereof, duly authorized in writing by the board, shall at all reasonable times for the purpose of examination have access to and the right to copy any book, account, record, paper, or correspondence relating to any matter which the board is authorized to consider or investigate. Any person who upon demand refuses any duly authorized member, officer, employee, or agent of the Labor Board such right of access or copying, or hinders, obstructs, or resists him in the exercise of such right, shall upon conviction thereof be liable to a penalty of $500 for each such offense. Each day during any part of which such offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

(b) Every officer or employee of the United States, whenever requested by any member of the Labor Board or an Adjustment Board duly authorized by the board for the purpose, shall supply to such board any data or information pertaining to the administration of the functions vested in it by this title, which may be contained in the records of his office.

(c) The President is authorized to transfer to the Labor Board any books, papers, or documents pertaining to the administration of the functions vested in the board by this title, which are in the possession of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act and which are no longer necessary to the administration of the affairs of such agency.

Sec. 312. "Prior to September 1, 1920, each carrier shall pay to each employee or subordinate official thereof wages or salary at a rate not less than that fixed by the decision of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act, in effect in respect to such employee or subordinate official immediately preceding 12.01 A. M. March 1, 1920." Any carrier acting in violation of any provision of this section shall upon conviction thereof be liable to a penalty of $100 for each such offense. Each such action with respect to any such employee or subordinate official and each day or portion thereof during which the offense continues shall constitute a separate

offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

Sec. 313. The Labor Board, in case it has reason to believe that any decision of the Labor Board or of any Adjustment Board is violated by any carrier, or employee or subordinate official, or organization thereof, may upon its own motion after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.

Sec. 314. The Labor Board may (1) appoint a secretary, who shall receive from the United States an annual salary of $5,000; and (2) subject to the provisions of the civil-service laws, appoint and remove such officers, employees, and agents; and make such expenditures for rent, printing, telegrams, telephone, law books, books of reference, periodicals, furniture, stationery, office equipment, and other supplies and expenses including salaries, traveling expenses of its members, secretary, officers, employees, and agents, and witness fees, as are necessary for the efficient execution of the functions vested in the board by this title and as may be provided for by Congress from time to time. All of the expenditures of the Labor Board shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the chairman of the Labor Board.

Specification of Errors.

Sec. 315. There is hereby appropriated for the fiscal year ending June 30, 1920, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, or so much thereof as may be necessary, to be expended by the Labor Board, for defraying the expenses of the maintenance and establishment of the board, including the payment of salaries as provided in this title.

Sec. 316. The powers and duties of the Board of Mediation and Conciliation created by the Act approved July 15, 1913, shall not extend to any dispute which may be received for hearing and decision by any Adjustment Board or the Labor Board.

Specification of Errors.

The Circuit Court of Appeals erred:

1. In affirming the decree of the District Court of the United States for the Eastern District of Pennsylvania dismissing the bill filed by the appellants.

2. In deciding and holding as follows:

> "We do not understand just what the complainants mean by their 'civil' rights. If they mean such as are accorded labor by general law—the right lawfully to organize, *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, the right to bargain collectively, the right to strike—no evasion of such rights is shown and, accordingly, none is here in question."

3. In holding and deciding as follows:

> "Moreover, the complainants have expressly grounded their actions on the Transportation Act of 1920 and, limiting their grievance against the respondents to their refusal to observe its terms, they have asserted that the conduct of the respondents is in violation of rights granted them by that Act in declaring a national policy in respect to railroad labor disputes. Thus both the pleadings and the facts show that complainants stand on their statutory rights."

4. In deciding and holding as follows:

> "It is evident that in enacting the Transportation Act of 1920, and, through it, affording means by which to prevent interruption of interstate commerce by labor disputes and strikes, the Congress had the public interest first in mind. It was more concerned in protecting the public than in conferring rights upon railroad employers and employees. To this end it set up machinery which these contending forces could invoke to compose their differences, or which could be invoked against them. This machinery was novel in character and was intended to function not by ordinary processes but by the force of public opinion. It did not disturb many of the rights which theretofore admittedly belonged to an interstate carrier and to its employees. The carrier's right to deal with individual representatives of its employees remained. The right of employees, who are members of labor unions, to select their

own conference representatives without the right of their employer to restrict their selection to its own employees and exclude officers of labor unions was not abridged. Moreover, the 'statute does not require (the carrier) to recognize or to deal with, or confer with labor unions. It does not require employees to deal with their employees through their fellow employees.'"

5. In deciding and holding as follows:

"With such rights preserved to these opposing forces and with no new rights of the kind here in issue expressly given them, the statute imposes certain duties and confers certain powers upon the Labor Board. One of these is the power to decide a labor dispute between a carrier employer and its employees. This power of decision, however, does not carry with it a power of execution. Obedience to decisions of the Labor Board is not compulsory; enforcement of its decisions rests solely upon public opinion marshalled on publication of the conduct of the offending party. This is as true of interlocutory decisions as of final decision. Though a decision be in favor of employees, we can not find anything in the statute which gives them a right to its enforcement by the Courts."

6. In deciding and holding as follows:

"But we find nothing in the statute which makes it compulsory upon the employer to confer with the representatives of the employees or

further to contest the matter before the Labor Board. Though liable to such punishment as public opinion may inflict, the employer (and likewise, in a reverse situation, the employees) may, for any reason, or no reason at all, decline further to engage in the dispute. As obedience to the mandate of Decision No. 218 of the Labor Board respecting a new election of representatives was not compulsory upon the Company, its refusal to obey the decision violated no legal or equitable rights of the complaining employees. This is an instance where the machinery which the Congress set up did not work through to final decision and resulted in no punishment except that of public opinion directed against the Company by the announcement of the Labor Board's Decision No. 1829. As the Transportation Act of 1920 makes no provision for a situation where one of the parties defaults, it does not provide the other party (in this instance the employees) with means to coerce the defaulting party."

7. In deciding and holding as follows:

"Further asserting statutory rights in themselves, the complainants maintain that the conduct of the Company and its officers was a statutory offense in the nature of conspiracy under the provisions of Section 19 of the Criminal Code which provides that, 'If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise and enjoyment of any right or privilege, secured to him by the * * * laws of the United States,' they shall be punished,

and they further maintain that injunction will lie to restrain means for promoting such conspiracy. *Pettibone* v. *United States*, 148 U. S. 197; *Duplex Co.* v. *Deering*, 254 U. S. 465. Even so, the thing which is done or is threatened must in itself be unlawful, or, if unlawful, it must be carried out by unlawful means in order to constitute a conspiracy. The thing here charged against the Company was conduct which, under the terms of the Transportation Act and in the light of the decision of the Supreme Court in *Pennsylvania Railroad Company* v. *Labor Board*, *supra*, was not unlawful either in purpose or in means employed to carry out the purpose. It follows that in their conspiracy charge the complainants are not aided by a statutory right."

8. In deciding and holding that the defendants have not violated, are not violating and threatening to continue violating a positive statutory law, *i. e.*, the Transportation Act of 1920.

9. In deciding and holding that the defendants, Pennsylvania Railroad Company, its officers, defendants herein, and the other individual defendants have not committed violations of the Transportation Act by agreement and co-operation and that such agreement and co-operation did not constitute a conspiracy.

10. In deciding and holding that the acts of the defendants complained of herein did not violate the complainants' civil and statutory rights, and injure and

oppress them in the free exercise and enjoyment of such rights.

11. In deciding and holding that the complainants have not sustained and are not sustaining pecuniary losses and other damages by reason of the defendants' unlawful acts for which they have no adequate remedy at law.

12. In deciding and holding that the complainants are not entitled to the injunctive relief and money damages prayed for in the Bill of Complaint herein.

13. In deciding and holding as follows:

> "For these several reasons we are constrained to hold with the learned trial Judge (294 Fed. 556 and 296 Fed. 220) that the complainants have not shown rights for the enforcement of which the processes of a court of equity are available."

Argument.

The Theory of the Case.

At the outset it should be noted that this is not an action to enforce a decision of the Railroad Labor Board, but one to enjoin the violation of an express statutory provision. The complainants' case is entirely independent of Decisions Nos. 119 and 218 of the Railroad Labor Board prescribing rules and a form of ballot for the choice of representatives by the employees of the Company, or Decision No. 1829 declaring that the

Company had violated such decision. The complainants rely on the provisions of the Transportation Act as such, and their cause of action would be sufficient and complete if the Railroad Labor Board had never rendered any of the three decisions or taken cognizance of any of the grievances alleged in the Bill of Complaint.

Such decisions are relied on merely as authoritative adjudications of the facts involved therein and as lawful regulations made by the Board.

Nor does the case rest entirely upon the theory of a conspiracy. The conspiracy is charged as a conclusion of law arising from the commission of an illegal act by prearranged and concerted action between the defendants, but the complainants contend that this action would be fully maintainable even if no case of conspiracy had been made out.

The plaintiffs base their action on the familiar rule that courts of equity have the inherent power to restrain violations of law, where such violations are continuous in character, and that suits for injunctions restraining such violations will be entertained at the instance of a private party upon proof that his civil rights are violated or his property rights invaded, and that he has no adequate remedy at law.

Walla Walla City v. *Walla Walla Water Co.*, 172 U. S. 1;

Coty v. *Prestonette*, 285 Fed. 501;

Stephens v. *Ohio State Telephone Co.*, 240 Fed. 759;

Sailors Union v. *Hammond Lumber Co.*, 156 Fed. 450.

Argument.

Another statement of the complainants' main cause of action is that it seeks to restrain a continuing conspiracy to violate the laws invoking the rule that courts of equity will restrain such a conspiracy at the suit of the party against whom it is directed and upon proof of irreparable damage and absence of an adequate remedy at law.

Arthur v. *Oakes*, 63 Fed. 310;
Hopkins v. *Oxley Stave Co.*, 83 Fed. 912;
Vonnegut Machinery Co. v. *Toledo Machine & Tool Co.*, 263 Fed. 192.

The damage claims in the Bill of Complaint are predicated upon proof that the complainants, as employees of the Company, have sustained pecuniary damages by reason of the unlawful acts sought to be restrained by a decree of the Court, and upon the theory that such causes of action for damages are properly joined in the equitable suit for injunction, because they flow directly from the unlawful acts proven, and the main suit being in equity, the Court will pass upon all phases of the controversy and make a complete determination of the rights of the parties, including the award of money damages as an incidental relief, and also because an adjudication of the damage claims will avert a multiplicity of actions.

The appellants contend that the record in this case establishes the following uncontroverted facts:

I. The defendants have violated, are violating and

threaten to continue violating a positive statutory law, *i. e.*, the Transportation Act of 1920.

II. The violations of the Transportation Act herein complained of were and are committed by agreement and co-operation between the defendants Pennsylvania Railroad Company, its officers defendants herein and by the other individual defendants, and the agreement and the defendants' acts under the same, constitute a conspiracy.

III. The unlawful acts and conspiracy on the part of the defendants violate the complainants' civil and statutory rights, and injure and oppress them in the free exercise and enjoyment of such rights.

IV. The complainants have sustained and are sustaining pecuniary losses and other damages by reason of the defendants' unlawful acts, for which they have no adequate remedy at law.

V. The complainants are the proper parties to maintain this suit.

VI. The complainants are entitled to the injunctive relief prayed for herein.

VII. The complainants are entitled to money damages and to a decree ordering that an accounting be taken of such damages.

The remaining portions of this brief will be devoted to a discussion of the propositions above advanced.

POINT I.

The defendants have violated, are violating and threaten to continue violating a positive statutory law, *i. e.*, the Transportation Act of 1920.

The action is brought under Title III of the Transportation Act entitled: "Disputes Between Carriers and their Employees and Subordinate Officials," and the questions involved in this suit turn very largely upon the construction of the provisions of this title.

To put it tersely, the contention of the complainant is that Title III of the Transportation Act in effect provides for a system of arbitration of disputes between carriers and their employees which is compulsory up to the point of compliance with the final decisions of the Railroad Labor Board; that while the parties to any dispute about wages and working rules are at liberty to reject the Board's *final* decision on such dispute, all steps leading up to such decision as prescribed by the Transportation Act and all other positive directions of the Act are mandatory upon the parties to the dispute and enforcible by process.

That this was the intention of Congress in passing the Transportation Act is evidenced from the history of the legislation with respect to labor disputes on railroads, the committee reports and debates in Congress, the explicit statement of the President of the United States in approving of the Act, the general plan of Title III, and above all the text of the enactment itself.

It is a matter of common knowledge that the frequent labor disputes on the railroads of the United States have, particularly in recent years, been the subject of grave

public concern because such disputes have, on numerous occasions, led or threatened to lead to interruptions of the operations of the roads, involving serious disturbances in the whole national system of commerce and transportation.

In view of the vital interest of the people in maintaining regular and uninterrupted railroad service throughout the country, Congress has ever been in quest of efficient methods of avoiding, minimizing or adjusting controversies between railroad corporations and their employees.

A voluntary Board of Arbitration with functions limited to the railroad industry was created by Congressional enactment as early as 1886 (38 Stat. 63).

The Erdman Act of June 1st, 1898, and the Newlands Act of July 15, 1913, both provided for the establishment of Boards of Arbitration.

While each succeeding Congressional act sought to perfect the features of arbitration in railroad labor disputes, none of the arrangements proved effective to compose all disputes between carriers and employees and to avert serious interruptions in the operation of the railroads as a result of such disputes. In the fall of 1916, the danger of a general tie-up of the railroad system of the country was so imminent that Congress found itself impelled to take the dispute into its own hands and to adjust the same by means of a direct statutory enactment establishing eight hours as the standard of a day's work for train service employees and providing for increased wages for work in excess of such hours.

Point I.

During the period of Federal control, the United States Railroad Administration succeeded in preventing any serious interruption in the operation of the railroads through fair dealings with the employees and equitable adjustment of all disputes as to wages and working conditions.

One of the first acts of the administration was to do away with the practice of discriminating against membership in certain labor unions. This was accomplished by General Order No. 8 declaring that "no discrimination will be made in the employment, retention or conditions of employment of employees because of membership or non-membership in labor organizations."

The wages of the railroad employees were twice increased by the United States Railroad Administration in keeping with the growing cost of living. With reference to the employees in the mechanical departments of the railroads, the United States Railroad Administration enacted definite and uniform classifications of work, abolished the very unsatisfactory system of piecework, established "seniority rights," provided against arbitrary dismissals and, above all, created effective machinery for the adjustment of all grievances of employees.

The rights thus conferred upon the railroad employees were secured by formal agreement entered into between the United States Railroad Administration and the recognized organizations of the workers. The provisions of that agreement were strictly observed and all decisions of adjustment boards on grievances of employees were scrupulously lived up to.

Point I.

The ability of the United States Railroad Administration to maintain harmonious relations and to prevent interruptions in the operation of the railroad service was due to the fact that the Board was acting not only in behalf of the Government of the United States but also as the employer. It was thus placed in a position to execute the decisions of the adjustment boards directly and without the necessity of enforcing them on a third party.

The experience gained during the period of Federal control was fresh in the minds of the members of Congress when the provisions of the new law were being discussed in connection with the proposed termination of Federal control.

There were two definite currents of opinion in the minds of the people with respect to the system of operating the railroads of the country after the termination of the period of war-time control. One favored permanent Government ownership of the railroads after the example of most countries of Europe. This plan was incorporated in a bill introduced in the House of Representatives on August 2, 1919 (H. R. 8157), by Representative Sims entitled "A bill authorizing the acquisition by the United States of private interest in railroads and transportation properties, and for the payment of just compensation therefor, and providing the means for determining such compensation; creating a corporation for public service, with authority to operate the properties so acquired, and authorizing a lease to such corporation of such properties when so acquired, and for other purposes." The other view

favored the return of the railroads to their former owners, and several bills to effect such re-transfer were introduced in Congress.

The Transportation Act eventually adopted on February 28, 1920, was to some extent a compromise between the two conflicting policies. It intended to return the railroads to their former private owners subject, however, to larger responsibilities with respect to their operation to the public and their employees and with more effective provisions against interruption in the operation of the roads.

In dealing with the latter phase of the problem, Congress clearly recognized that the main and practically the sole cause of such interruptions are labor disputes and that such disputes invariably revolved around the question of wages and working rules and conditions. The problem of securing uninterrupted service on the railroads thus essentially resolves itself into a question of settling or adjusting disputes between carriers and their employees on these subjects. The primary object of Congress in enacting Title III of the Transportation Act therefore was to provide appropriate machinery for the establishment of fair and reasonable wages and working conditions on the railroads. On this subject the statement of Representative Esch in reporting the Bill in the House of Representatives is very illuminating. It is in part as follows:

> "Our theory is that primarily, fundamentally, we must create such a tribunal for the ascertainment of facts and the decision of questions

relating to wages and hours of service and working conditons as will commend it to the judgment of mankind. Unless we can do that there will be doubt as to the validity and the justice of the award and there will be those who will want to break from such an award. If we can create a tribunal so fair, so honest, so honorable that neither party to the controversy can cast aspersions upon it, have we not gone a long way toward begetting respect for the award of that tribunal not merely on the part of the parties interested in the dispute, but on the part of the general public?"

Congress recognized two methods of establishing fair and reasonable wages and working conditions: one, by agreement between the parties themselves and the other to be resorted to only in case of failure of the parties to agree, by the decision of an impartial and authoritative tribunal.

The merit of the first method is quite obvious. An agreement freely arrived at by the parties directly concerned in the dispute is, of course, acceptable to both parties alike and meets the highest test of fairness and reasonableness. This condition, however, presupposes a *bona fide* agreement actually and voluntarily made between the parties to the dispute. The Transportation Act, as all law, looks to the substance and not to the mere form. An alleged agreement forced upon the employees or acquiesced in by a small portion of such employees against the decided opinion of the large majority will, of course, not satisfy the require-

ments of the law. This is undoubtedly what Congress had in mind in providing by Section 301 of the Transportation Act that all disputes be considered and, if possible, decided in conference between *representatives designated and authorized so to confer* by the carriers *or the employees.*

Realizing, however, that voluntary agreements are not often reached in conference between disputants and that there is no way of forcing such agreements, Congress determined to prevent the dangerous consequences of unadjusted disputes by taking them out of the hands of the parties when they had reached a deadlock in their negotiations.

To this end it provided that the Labor Board or the Adjustment Board as the case may be, shall establish rates of wages and standards of working conditions which in the opinion of the Board are just and reasonable (Sec. 307-d), and Congress has made every possible provision to give weight and authority to such decisions of the Boards. With that object in view, the Railroad Labor Board, which alone has jurisdiction over the question of wages, is constituted of persons of high standing appointed by the President by and with the advice and consent of the Senate, who equally represent all interested groups involved in a dispute, the management, the workers and the public.

The decisions of the Board must be based on a thorough study of the controversies and in order to enable it to make such study, the Transportation Act empowers the Board to compel the attendance of the

parties to the dispute and other witnesses as well as the production of books and documents. The Act furthermore provides in detail the elements and features to be considered by the Board in determining the justness and reasonableness of the wages of railway employees, such elements being as follows:

> "(1) The scale of wages paid for similar kinds of work in other industries;
>
> (2) The relation between wages and the cost of living;
>
> (3) The hazards of the employment;
>
> (4) The training and skill required;
>
> (5) The degree of responsibility;
>
> (6) The character and regularity of the employment; and
>
> (7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments."

The final decision thus reached by the Railroad Labor Board on the question of what shall constitute just and reasonable wages from time to time is not enforcible by process. As this Court has said in the case of *Pennsylvania R. R. Co.* v. *U. S. Labor Board*, 261 U. S. 72:

> "The only sanction of its decision is to be the force of public opinion invoked by the fairness of a full hearing, the intrinsic justice of the conclusion, strengthened by the official prestige of the Board, and the full publication of the violation of

such decision by any party to the proceeding. The evident thought of Congress in these provisions is that the economic interests of every member of the Public in the undisturbed flow of interstate commerce and the acute inconvenience to which all must be subjected by an interruption caused by a serious and widespread labor dispute, fastens public attention closely on all circumstances of the controversy and arouses public criticism of the side thought to be at fault. The function of the Labor Board is to direct that public criticism against the party who, it thinks, justly deserves it."

The reasons why Congress has not chosen to make the decisions of the Railroad Labor Board with respect to wages enforcible by process, are made quite evident from the reports and the debates in Congress on that subject. If such decisions were made binding, provisions would have to be made in the law for enforcing them equally upon the carrier and their employees. Such, in fact, was the original intention of the authors of the Bill. The first and second drafts of the Cummins Bill in Senate (S. 2906 introduced August 23, 1919, and S. 3288 introduced October 22, 1919), both provide for penalties against carriers refusing to obey the decision of the Board and against employees going on strike in violation of such a decision. The first draft of the Esch Bill in the House of Representatives (H. R. 10453 introduced November 8, 1919), makes the carriers and labor unions reciprocally responsible in damages for violations of the decisions of the Railroad Labor Board. In the end, however, Congress seems to have reached the con-

clusion that while it had the power to enforce a scale of wages upon railroad companies (*Wilson* v. *New*, 243 U. S. 35), it had no corresponding constitutional power to force the acceptance of a fixed scale of wages by employees as such legislation would come in conflict with the constitutional prohibition of involuntary servitude.

Congress furthermore was reluctant to embark upon the policy of direct anti-strike legislation. On the subject, the statement of Mr. Esch, one of the authors of the Transportation Act, is illuminating. It is in part as follows:

> "We have not gone to the limit in putting in an anti-strike clause * * *. Strikes are threatened which involve not merely hundreds of men, as strikes used to in an early day, but strikes are now pending that involve millions. Gentlemen, not as a matter of sentiment; not, if you please, as a matter of so-called justice; but as a matter of workability, how are we to enforce a law penalizing strikes when the strike may involve several hundred of thousands of men? My fear is that if men are permitted to disregard a law and see that it is not to be enforced, they will be inclined to disregard other laws."

While Congress in the words of Representative Esch has not "gone to the limit" of making the decisions of the Railroad Labor Board legally enforcible by mandatory provisions against the carrier and prohibition of strikes against the employees, it has gone to the limit of insuring the rendition of a decision by the Railroad Labor Board establishing just and reasonable wages in all dis-

putes between the parties on that subject. Depending in the last analysis upon the moral efficacy of such decisions to prevent strikes or other interruptions in the operation of the roads, Congress determined not to tolerate any obstacles to be placed in the way of such decisions. It has in effect said to both parties: "When the Railroad Labor Board renders a final decision on the merits in any wage dispute, you are at liberty to accept or reject the same. If you reject it, you may fight out your controversy with your own weapons, but you must not declare war before the Railroad Labor Board has been given a chance to pass upon the dispute between you and render a fair decision, and you must not impede the processes provided by the Transportation Act to enable the Board to render such a decision." The language of Title III of the Transportation Act leaves no doubt about the mandatory character of all proceedings leading up to the final decision of the Railroad Labor Board.

Section 301 of the Act, which initiates the proceeding, reads:

> "It *shall be the duty* of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes *shall* be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute.

> If any dispute is not decided in such conference, it *shall* be referred by the parties thereto to the Board which under the provisions of this title is authorized to hear and decide such dispute."

Of course the human mind cannot devise a method to force parties to consider disputes in good faith or to decide such disputes but the statute does the next best thing; it directs in mandatory terms meetings between the parties and provides that if they fail to agree they "shall" refer the differences to the Railroad Labor Board.

This provision, however, is not the only one conferring jurisdiction on the Railroad Labor Board. If the parties do not jointly refer their disputes to the Board as directed by Section 301, the carrier alone or the organization of employees alone may so refer it, and if neither of the two parties to the dispute refers the same, the Board is authorized to take jurisdiction on its own motion (Sections 303, 307).

These provisions indicate the essential difference between the Labor Title of the Transportation Act and the provisions for arbitration contained in the earlier railroad statutes. In all previous legislation, the arbitration boards were purely voluntary tribunals, which could obtain jurisdiction only by voluntary submission of both parties. If either or both refused to arbitrate, the Board could not function. Under the terms of the Transportation Act, the Railroad Labor Board is given jurisdiction over disputes between carriers and their employees independently of the desires of either or both. The Board in this respect is constituted as a court with power to issue process on the complaint of either party and even

on its own motion. The Railroad Labor Board furthermore is authorized by Section 302 to issue subpoenas to compel the attendance of any witness and the production of any book, paper, document or other evidence from any place in the United States, to administer oaths and examine witnesses. By Section 308, Subdivision 4, the Board is moreover, empowered to make regulations "necessary for the efficient execution of the functions vested in it" by the Transportation Act.

The defendants Pennsylvania Railroad Company and its officers clearly disregarded the statutory duties imposed upon them by Section 301 of the Transportation Act when they refused to consider the disputes pending between the road and its shop craft employees in conference with System Federation No. 90 and further disregarded their statutory duty under said section in failing and refusing to refer such disputes to the Railroad Labor Board.

It is admitted on the record that on the 24th day of May, 1921, disputes involving rules and working conditions were pending between the defendant company and its employees engaged in shop or mechanical work. These controversies had their inception prior to the enactment of the Transportation Act, *i. e.*, on or about the 1st day of February, 1920, at which time the Dircetor General declined to act upon the same in view of the approaching termination of Federal control (Bill of Complaint, Paragraph 17 admitted by Answer, Paragraph Seventeenth). The dispute was passed on to the Railroad Labor Board, which received and took cognizance of the same on the day after its members were confirmed by the Senate,

April 15, 1920. With respect to such disputes, Decision No. 2 of the Railroad Labor Board made the following statement and ruling, to wit:

> "There are in the dispute as presented questions involving rules and working conditions, some of which are interwoven with and materially affect earnings and wages. Adequate investigation and consideration of these questions would demand time. Existing conditions required that the Board should make as early decision of the wage question as practicable. For that reason, it has been necessary—and both parties to the controversy have indicated it to be their judgment and wish, that the Board should separate the questions involving rules and working conditions from the wage questions. Accordingly, the Board has not undertaken herein to consider or change the rules and agreements now existing or in force by the authority of the United States Railroad Administration or otherwise and this decision will be so understood and applied.
>
> The Board assumes as the basis of this decision the continuance in full force and effect of the rules, working conditions and agreements in force under the authority of the United States Railroad Administration. Pending the presentation, consideration and determination of the questions pertaining to the continuation or modification of such rules, conditions and agreements *no changes therein shall be made except by agreement between the carrier and employees concerned.*"

(Bill of Complaint, Paragraph 21 admitted by the Answer, Paragraph Twenty-first.)

Point I.

By supplementing Decision 119, the Railroad Labor Board found:

> "The duty imposed by Section 301 on all carriers and their officers, employees and agents to consider and if possible to decide in conference all disputes between carriers and their employees has not been performed by the parties hereto either with regard to the wage *or the working conditions portion* of this dispute."

and decided:

> "The Labor Board calls upon the officers and *system organizations of employees* of each carrier, parties hereto, to designate and authorize representatives to confer and to decide so much of this dispute relating to rules and working conditions as it may be possible for them to decide. Such conferences shall begin at the earliest possible date."

(Bill of Complaint, Paragraph 26 admitted by the Answer, Paragraph Twenty-sixth.)

The duty of the Company and its officers to confer with their employees on the disputed rules and working conditions was thus not only generally fixed by statute but by direction of the Railroad Labor Board. That direction was in the nature of a regulation "necessary for the efficient execution of the functions vested in" the Railroad Labor Board, and had the force of law as much as if it had been incorporated in the body of the Transportation Act itself.

The conferences provided by Section 301 of the Trans-

portation Act are directed to be held between designated and authorized representatives of the carriers and of "the employees" of such carriers. The phrase "*the employees*" thus used in the statute can have no meaning other than the majority, if not the totality of such employees. The Transportation Act throughout assumes the existence of regular organizations of employees representing the bulk of workers in each division of the service and makes special provisions for unorganized minorities of not less than one hundred persons. Thus Sections 303 and 307 direct the Adjustment Boards and the Railroad Labor Board respectively to hear disputes "upon a written petition signed by not less than one hundred unorganized employees." Organizations of employees are assumed throughout the Act to represent majority groups of employees and to have authority to speak for them. . In fact the entire scheme for the adjustment of labor disputes formulated in Title III of the Transportation Act is predicated upon collective action between the carriers and the labor unions representing their employees. Section 301 assumes the existence of organized bodies of employees capable of representing the workers in conferences with the carriers and of referring disputes to the Adjustment Boards or to the Labor Board.

Section 303 in express terms directs the Adjustment Board to receive disputes for hearing upon the application "of the chief executive of any (carrier or) organization of employees."

Section 307 confers the same rights upon an "organ-

ization of employees" with respect to disputes cognizable by the Labor Board.

Section 313 authorizes the Labor Board to take action in the event of a violation of its decision by "an organization of employees."

At the time of the passage of the Transportation Act and prior thereto, the vast majority of employees on the railroads were organized in labor unions. During the period of Federal control such labor unions were officially and uniformly recognized by the United States Railroad Administration as the authorized spokesman and representatives of the railroad employees, and the Administration officially dealt and contracted with them in behalf of all such employees. The existence and extent of such organizations were facts of general public knowledge, and in the enactment of the Transportation Act Congress took notice thereof and legislated with respect to it. In fact the Bill originally introduced in the House of Representatives (H. R. 10453) limited the disputes which were to be considered under its labor provisions to those involving employees who were members of recognized labor unions, defining the term "union" as "any national craft, trade, labor or industrial organization of employees, 5000 or more of whose members are employees of carriers." The Bill as finally passed eliminated the specific description of labor unions and added provisions for the adjustment of disputes of groups of unorganized workers, but the whole scheme of adjustment of disputes remained predicated upon the existence and operations of labor unions.

Section 304 of the Transportation Act provides for

the appointment of three representatives of the "labor group" as members of the Railroad Labor Board from six nominees "whose nominations shall be made and offered by such employees, in such manner as the (Interstate Commerce) Commission shall by regulation prescribe."

Immediately upon the passage of the Act, the Interstate Commerce Commission made regulations for such nominations of which the following portions are quoted:

> "The overwhelming majority of the railroad employees and subordinate officials stated by those who are in a position to speak with confidence and authority to be more than 90 per cent., are members of or represented through certain organizations of employees. These organizations and their representatives have been recognized as authorized to speak for and represent the several classes of employees by the railroad companies prior to Federal control, by the Railroad Administration during Federal control and by the President in conferences and negotiations conducted by him. It is deemed advisable to classify these representative organizations into groups with respect to the more or less analogous character of the services performed, aiming to have the nominees, as nearly as possible, representative of and conversant with the interests of all the classes of employees and employment. For the purpose of making and offering nominations as members of the labor group of the Labor Board the Commission pre-

scribes that these organizations of employees shall be grouped as follows:

Group 1: * * *

Group 2:

International Association of Machinists,

International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America,

International Brotherhood of Blacksmiths, Drop Forgers and Helpers,

Amalgamated Sheet Metal Workers, International Alliance,

Brotherhood Railway Carmen of America,

International Brotherhood of Electrical Workers.

Group 3: * * *

The great mass of railroad employers are members of or representeed through the organizations named above."

"Group 2," above enumerated, represents the mechanical section of the Railway Employees' Department of the American Federation of Labor, and the local organizations of the national unions herein enumerated who were employed on the Pennsylvania Road, constituted the Complainant System Federation No. 90.

On the 24th day of May, 1921, there were about 70,000 workers employed by the Pennsylvania Railroad Company in shop or mechanical work on its road. Of these 62,000 to 63,000 held membership in System Federation No. 90 (Record, pp. 129, 130).

Point I.

System Federation No. 90, at that time, had been in continued existence about three years, *i. e.*, since the 8th day of July, 1918 (Record, p. 120). It has a permanent dues-paying membership, a set of executive officers, and a regularly established office and machinery for dealing with the carriers, the United States Railway Administration and the Railroad Labor Board, in all matters affecting the interests of the shop craft employees on the Pennsylvania Railroad System (Record, pp. 127, 128), and during all that period it negotiated with the carriers and was recognized by the latter as the duly authorized representative of the shop craft employees (Record, pp. 133 to 137). It was distinctly an "organization of employees" within the meaning and intent of the Transportation Act and the defendants well knew that it was.

The decision of the Railroad Labor Board No. 119, rendered on the 14th day of April, 1921, specifically called upon the officers "and system organizations" of employees of each carrier to designate and authorize representatives to confer with the carriers. In the same decision the Railroad Labor Board laid down the following rules and regulations:

> "The right of railway employees to organize for lawful objects shall not be denied, interfered with or obstructed.
>
> The right of such lawful organization to act toward lawful objects *through representatives of its own choice*, whether employees of a particular

carrier or otherwise, shall be agreed to by management.

The right of employees to be consulted prior to a decision of management adversely affecting their wages or working conditions shall be agreed to by management. *This right of participation shall be deemed adequately complied with, if and when the representatives of a majority of the employees of each of the several classes directly affected shall have conferred with the management.*

The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice."

These directions likewise were in the nature of regulations made by the Railroad Labor Board "for the efficient execution of the functions vested in it" by the Transportation Act, and was binding upon the defendants.

When, therefore, on the 24th day of May, 1921, the officers of System Federation No. 90, duly authorized and designated by the latter for that purpose, met the representatives of the Pennsylvania Railroad Company, ready to confer with them about the then pending disputes as to rules and working conditions on the Road affecting the employees in shop and mechanical work, the Penn-

sylvania Railroad Company was under the duty imposed upon it by the language of Section 301 of the Transportation Act, as well as by the regulations of the Railroad Labor Board (Decision No. 119) to consider such disputes in conference with the said officers of System Federation No. 90, and in good faith to exert every reasonable effort to decide the pending dispute in order to avoid an interruption in the operation of the road. The Company evaded and flagrantly violated this duty by refusing to confer with System Federation No. 90. It is true the Transportation Act does not and cannot prescribe the extent of the discussion between the parties with respect to the pending disputes, but it does contemplate a *bona fide* effort to consider them on the merits with a view of arriving at a settlement, and if no adjustment is reached either because of the parties' inability to agree or an unwillingness to discuss on the part of either of them, Section 301 directs in mandatory language that such dispute "shall be referred by the parties hereto" to the Board of Adjustment or the Labor Board. In no event does the law tolerate a deadlock which might lead to interruption of operations.

When the officers of System Federation No. 90 appeared before the representatives of the Pennsylvania Railroad Company ready to discuss the pending dispute the latter took the position that they had no proof that System Federation No. 90 represented a majority of the shop craft employees on the Pennsylvania Road, and somewhat inconsistently at the same time announced in effect that they would ignore System Federation No. 90 and create a new and different system of employee

representation for the purpose of dealing with them under the Transportation Act and the decisions of the Railroad Labor Board.

All through the very interesting discussion between the representatives of the Company and System Federation No. 90 (Plaintiff's Exhibit No. 3, Record, pp. 307 to 403), the defendant Company and its officers recognized and assumed to act under the provisions of the Transportation Act and the regulations of the Railroad Labor Board, yet the scheme evolved by it and subsequently put into effect was in flagrant violation of the letter and spirit of both. If the Company actually doubted the authority of System Federation No. 90 to speak in behalf of its shop craft employees, although the organization represented fully 90% of all its employees and had theretofore uniformly acted on their behalf, it could require proof of such authority, and such proof could be furnished in the same manner as proof of any other existing fact. The Company did not need to call for a new expression of the desires of its employees in this respect. An examination of the membership records of System Federation No. 90 would have furnished sufficient proof as to the number of employees it represented.

After all the situation presented no novel feature and fell directly within the well established rule of agency. The Transportation Act directs the carrier and its employees to deal with each other in a certain manner. The carrier is a corporation—the employees represent a very large body of men. Both are acting through representatives or agents, and each has the right to appoint or designate its own agents and confer upon them such

authority as it chooses. Either party of course may question the authority of the alleged agent of the other party and call for proof of such agency, but neither party is at liberty to designate the agent of the other party or the manner of his choice.

But even if the Company was not satisfied with such proof and in good faith desired a new expression of its employees' choice of representatives, it would naturally have submitted to them a ballot in such form as would at least enable them to say whether or not they cared to continue entrusting System Federation No. 90 with their representation. The ballot, however, which the Company prepared and subsequently submitted to its employees was on the face thereof, so formulated as to exclude the possibility of a designation of System Federation No. 90, or its officers, as the representatives of the shop craft employees. By breaking up the body of employees into numerous and fractional organizations divided along local and craft lines and calling upon each of such newly created divisions to name three individual representatives, the Company made it impossible for its employees or the majority of them to act as a unit and to designate and authorize an organization of its own choice to confer with the carriers. Even in the absence of any decision by the Railroad Labor Board on that point, this procedure was a clear violation of the carrier's duty under Section 301 of the Transportation Act and an arbitrary and flagrant violation of the statutory rights of its employees under that section. Moreover the question was taken up by the Railroad Labor Board and the lat-

ter condemned the unlawful methods of the Company in unmistakable terms holding, among others, that

> "The carriers had no more right to undertake to assume control of the selection of the representatives of the employees than the employees would have had to supervise the naming of the representatives of the carrier, for the statute plainly provides that the employees shall 'designate and authorize' their representatives."

and prescribing the form and tenor of a ballot to be submitted to the shop craft employees of the Company (Bill of Complaint, Paragraph 44, admitted by the Forty-fourth paragraph of the Answer). It is admitted that the defendant wholly ignored and violated the said ruling of the Railroad Labor Board.

At this point it may again be stated that this action is not brought to enforce this ruling as a decision of the Railroad Labor Board. Decision No. 218 of the Railroad Labor Board is here adverted to first because it is an authoritative adjudication that the Company has violated the provisions of Section 301 of the Transportation Act. The Railroad Labor Board is in effect constituted by the Transportation Act a court of limited jurisdiction, and appellants contend that within the limited sphere of its jurisdiction its findings of fact are conclusive upon the questions adjudicated.

Decision No. 218, including the form of ballot prescribed therein, furthermore constitute a proper regulation made by the Board for the efficient execution of the functions vested in it, and as such is binding upon the parties and enforceable by process.

Point I.

In order that the Labor Board may be enabled to execute its functions, including the most vital function of establishing fair and reasonable wages and working rules, it must possess the power of establishing rules of procedure with respect to the formulation and manner of submission of the issues or disputes between parties, and the first and most indispensable requisite in that connection is to determine who are the proper or necessary parties to the dispute. On this precise point this Court in *Pennsylvania Railroad Company* v. *United States Labor Board, et al., supra*, has said:

> "It is urged that the question who may represent the employees as to their grievances, rules and working conditions under Section 301 is not within the jurisdiction of the Labor Board to decide that these representatives must be determined before the conferences are held under that section, that the jurisdiction of the Labor Board does not begin until after the conferences are held, and that the representatives who can make application under Section 307 to the Board are representatives engaged in the conference under Section 301. Such a construction would give either side an easy opportunity to defeat the operation of the act and to prevent the Labor Board from hearing any dispute. It would tend to make the act unworkable. If the Board has jurisdiction to hear representatives of the employees, it must of necessity have power to determine who are proper representatives of the employees. That is the condition precedent to its effective exercise of jurisdiction at all. One of

its special powers conferred by Section 308 is to 'make regulations necessary for the efficient execution of the functions vested in it by this title.' This must include the authority to determine who are proper representatives of the employees and to make reasonable rules for ascertaining the will of the employees in this matter."

The point is stated with even greater emphasis in the opinion of the Circuit Court of Appeals in the same case, as follows:

"It is urged for appellee that the matter of the election of representatives by the employees is wholly procdural and is something with which the Board is in no wise concerned, and its action in this regard was wholly beyond its jurisdiction. The force of the contention is not apparent. Title III confers on the Board important duties, and prescribes in Section 308 (4) that it 'May make regulations necessary for the efficient execution of the functions vested in it by this title.'

This, alone, if indeed in the very nature of things it were not necessarily so, would empower the Board to make provision for determining whether those purporting to represent disputants before the Board do in fact so represent them. If it is claimed that a pending dispute has been adjusted between the parties to it, it is very essential that the body before whom the dispute is pending assure itself of the authority to so dispose of the controversy of those who purport to act for the parties. This is especially true where one side of the dispute is a body of individuals such as employees of a great carrier."

Point I.

After refusing to recognize and confer with the legitimate and existing organization representing ninety per cent. of its shop craft employees and after denying such employees the opportunity and right to designate their own organization as their accredited representative, the Pennsylvania Railroad Company submitted its ballot above described to its shop craft employees, and System Federation No. 90 submitted another ballot to such employees inquiring whether they favored continued representation by the said Federation. Only 3,480 employees voted in favor of individual representation on the Company's ballot. Over 37,000 voted on the Federation ballot in favor of continued representation by System Federation No. 90. The defendants ignored the vote of the vast majority of its shop craft employees and continued in its refusal to deal with the organization thus again designated as the authorized representative of such employees. Instead it recognized the individuals, on its own showing chosen by no more than ten per cent. of such employees, and proceeded to make "agreements" with them establishing rules and working conditions in the shop craft works and to enforce such alleged agreements upon all employees in such work over the protest and against the express opposition of at least ninety per cent. of them. On the strength of this high-handed procedure, the defendant Company took the position that the disputes between it and its shop craft employees had been fully adjusted, and that there was no longer any dispute about which it was bound to confer with its employees, or which it should submit to the Railroad Labor Board or of which the employees could

bring before the Board or of which the Board could take cognizance on its own motion.

The Pennsylvania Railroad Company thus clearly evaded and violated the duty imposed upon it by Section 301 of the Transportation Act to consider a dispute between it and its employees in conference with designated and authorized representatives of the latter, to refer such dispute, if not decided in conference, to the Railroad Labor Board and to exert every reasonable effort to avoid an interruption to its operation growing out of such dispute. It also unlawfully frustrated the right of a *bona fide* organization of employees to secure a hearing on a dispute before the Railroad Labor Board under Section 307 of the Transportation Act, and the right and opportunity of the Board to receive such dispute for hearing on its own motion and to establish just and reasonable wages and working conditions under the provisions of the same section.

It also voiolated specific and lawful regulations of the Railroad Labor Board in the submission of its ballot to its shop craft employees and in assuming to make an agreement with a minority of its employees and attempting to impose the terms thereof upon all such employees.

The wrongs of the defendants thus complained of relate directly to the latter's violations of the main provisions of the Transportation Act as such and of necessary and reasonable regulations made by the Railroad Labor Board by authority of the Act. As stated above, the complainant's cause of action does not depend upon any decision of the Railroad Labor Board. The complainants do not ask the Court to direct the defendants to submit a ballot to their shop craft employees in the

form prescribed by Decision No. 218. They seek to enjoin the defendants from refusing to recognize and confer with the authorized representatives of their shop craft employees, from continuing to deal with persons not authorized or designated by such shop craft employees to represent them for the purposes of the Transportation Act, and from continuing to enforce upon their shop craft employees as a whole terms of an alleged agreement at best made with representatives of an admitted small minority, all in violation of the Transportation Act as such.

The appellants furthermore contend that the so-called "Decision" No. 218 of the Railroad Labor Board is not a decision within the meaning and intent of Title III of the Transportation Act, but merely a "regulation" or rule of procedure.

"Decisions" of the Railroad Labor Board, under the provisions of the Transportation Act, are only such as adjudicate disputes which threaten an interruption in the operation of the carrier. Such disputes are specifically defined in the Act and divided into two classes, those involving "grievances, rules or working conditions" which are cognizable by both Boards (Section 303) and "disputes with respect to the wages or salaries of employees or subordinate officials of carriers" cognizable by the Labor Board only.

Section 307, Subdivision (d), provides that "All the decisions of the Labor Board in respect to wages or salaries and of the Labor Board or an Adjustment Board in respect to working conditions of employees or subordinate officials of carriers shall establish rates of wages and salaries and standards of working conditions

which in the opinion of the Board are just and reasonable," and thereupon enumerated the tests upon which such justness and reasonableness should be determined. Sections 310 and 311 empower the Board to compel the attendance of witnesses and production of books, papers and documents in connection with its hearings, and Section 313 authorizes the Board in case it has reason to believe that any decision of the Labor Board or of an Adjustment Board is violated by any carrier, or employee or subordinate official, or organization thereof, to publish such violation.

The entire context of Title III of the Transportation Act makes it clear that the "decisions" of the Adjustment Boards and Labor Boards, which are thus made and left to the parties to accept or reject subject only to the penalty of adverse public comment by the Labor Board, refers to final decisions on disputes involving wages, grievances, rules and working conditions, made after a full hearing of all parties directly interested, and not to mere incidental orders or rules of procedure.

The decision in *Pennsylvania Railroad Company* v. *United States Labor Board*, *supra*, is not in conflict with the principles above contended for by the appellant. True the opinion in that case refers to Decisions No. 119 and No. 218 of the Railroad Labor Board as decisions "within the meaning of the Transportation Act" and characterize them as "not being compulsory." But this expression is in the nature of an *obiter dictum*. It was not necessary for the adjudication of the issues in that case, and the distinction between "decisions" of the Railroad Labor Board in the nature of final adjudica-

tions on the merits of disputes involving wages and working conditions and mere procedural regulations incidentally established by the Board by express statutory authority, was not presented to the Court nor passed upon in that case.

The main contentions of the appellants in the above case was that Section 301 of Title III of the Transportation Act conferred no jurisdiction whatsoever upon the Labor Board; that all that Section did was to impose a duty upon the carriers and their employees to confer whenever a dispute arose between them which was likely to lead to an interruption to the operation of the carrier. The appellant (Pennsylvania Railroad Company) further contended that the Railroad Labor Board had no authority to prescribe rules and principles governing conferences between carriers and their employees as it did by Decision No. 119, or to regulate the manner in which representatives of the employees should be designated as it did by Decision No. 218, and that if it was held that Title III conferred such powers upon the Railroad Labor Board then the enactment was unconstitutional and void. The Court in substance overruled these contentions of the Pennsylvania Railroad Company and held that the Railroad Labor Board had authority to decide the methods by which employee representatives should be designated for the purposes of the Transportation Act. For the purposes of this conclusion, it did not matter whether Decisions Nos. 119 and 218 were to be considered as "decisions" of the Railroad Labor Board not enforceable by process or as regulations of the Board made by statutory authority and enforceable by process.

Point I.

The appellants maintain that the latter is the correct position, but neither view of the particular point under discussion affects the cause of action herein. If Decision No. 218 is to be considered as not compulsory upon the Company, it merely means the Company was not bound to adopt the form of ballot prescribed by the Railroad Labor Board. That, however, does not relieve the Company from the duty of complying with the mandatory provisions of Section 301 of the Transportation Act, *i. e.*, the duty to confer in good faith with the properly authorized and designated representatives of its employees, and either to make an agreement with such *bona fide* representatives of such employees or, failing such agreement, to refer the dispute to the Railroad Labor Board and to permit the latter to make a decision on the same after a full hearing.

To hold otherwise would be to render the whole Labor Title of the Transportation Act absolutely meaningless. It would involve a holding that carriers and their employees cannot be forced by law to exert reasonable effort to avoid interruption to the operation of the carrier growing out of disputes between them, to consider such disputes and to refer to the Railroad Labor Board such issues as are not composed in conference, although Section 301 imposes such duties upon them in mandatory terms. It would imply that a mere semblance of a conference between the carrier and a few hand-picked employees would satisfy the requirements of the statute, although the latter specifically prescribed that the conferees be "representatives designated and authorized so to confer," and that any fiction of an agreement alleged

to have been made between the carrier and its employees would satisfy the requirements of the Transportation Act no matter how fraudulently contrived and no matter how strongly opposed by the main body of employees.

Under such a construction the carrier or the employees could ignore a complaint submitted by the other side to the Adjustment Board or the Railroad Labor Board if it felt like ignoring it and could with impunity violate any regulations of the Board.

The Railroad Labor Board created by the Transportation Act would thus be reduced to the status of a purely voluntary tribunal of arbitration even less effective than the Arbitration Boards under the earlier Railroad Statutes, whose decisions were made enforceable by law. A construction of this kind would have the practical effect of wiping out Title III of the Transportation Act from the statute books.

The ballots submitted by the Pennsylvania Railroad Company to its shop craft employees, and voted on by a small minority of such employees, as above recited, resulted in the "election" of about 828 individuals, designated as members of 276 separate shop craft committees within 46 distinct local divisions created by the Road and it was with the chairmen of such committees within each of the five main regions of the road that the alleged agreement between the Company and its shop craft employees establishing wages and working conditions, was made (Record, pp. 173 to 188). The Company continued operating under the terms of the said alleged agreement and dealing with the representatives alleged to have been designated on its ballots until July, 1923. It

held no elections among its employees until 1922. In 1923 the Company submitted to its shop craft employees ballots practically identical in form with those of 1921. It has ever since continued dealing with the alleged employee representatives chosen on such ballots and is operating under "agreements" alleged to have been made with them (Record, pp. 191 to 196). It is admitted that the Company has ever since the 24th day of May, 1921, refused to deal with System Federation No. 90 as a representative of its shop craft employees or with any other persons or organizations in their behalf except those designated on the Company's own ballots above mentioned. It is also admitted that the Company continue operating under the terms, as to wages and working conditions, of its said agreements with the alleged representatives of the shop craft employees chosen on its ballots. The violations of the Transportation Act above set forth have therefore been and still are continuous in character and the Company has definitely avowed its intention of continuing the same in the future.

POINT II.

The violations of the Transportation Act herein complained of were and are committed by agreement and co-operation between the defendants Pennsylvania Railroad Company, its officers defendants herein and by the other individual defendants, and the agreement and the defendants' action under the same, constitute a conspiracy.

While the defendants deny the charges of conspiracy as set forth in the Bill of Complaint, they specifically admit by Paragraph Thirtieth of their Answer that "*they* (defendants) refuse to recognize System Federation No. 90 and its Executive Council as representatives of the employees of the Pennsylvania Railroad Company."

The defendants also admit by paragraphs Thirty-fourth and Thirty-fifth of their Answer that "they (the defendants, including the officers of the Company) dealt with the representatives chosen on the ballot submitted by the Company and that they, the said officers, entered into agreements with the persons so chosen on the Company ballots fixing wages and working conditions for all shop craft employees of the Company."

It is furthermore admitted that the defendants T. H. Davis, W. J. Hilton, Charles Mode, J. E. Cavey and C. G. Larson hold themselves out as officers and representatives of the alleged organizations of employees created by the Company and assumed to act in behalf of such employees under the provisions of the Transportation Act (Bill of Complaint, Paragraph 2, Answer Second Paragraph).

Point II.

The defendants are thus admittedly acting in concert in all of the acts above complained of as violations of the Transportation Act, and if such acts are unlawful, as the appellants contend they are, then it follows that the defendants are united in a combination to do an unlawful thing, which in the eyes of the law constitutes a conspiracy.

> *Duplex Co.* v. *Deering*, 254 U. S. 443, 465;
> *Pettibone* v. *United States*, 148 U. S. 197, 203;
> *Davidson* v. *United States*, 274 F. 285, 287;
> *Alaska S. S Co.* v. *International Longshoremen's Assn.*, 236 Fed. 964, 969;
> *National Fireproofing Co.* v. *Mason Builders Assn.*, 169 Fed. 259, 264;
> *Goldfield Consol. Mines Co.* v. *Goldfield M. U. No. 220*, 159 Fed. 500, 517;
> *Hopkins* v. *Oxley Stave Co.*, 83 Fed. 912, 933;
> *Toledo A. A. & N. M. Ry. Co.* v. *Pennsylvania Co.*, 54 Fed. 730, 739.

The unlawful acts on the part of the defendants not only constitute a common law conspiracy, but also a statutory offence in the nature of a conspiracy under the provisions of Section 19 of the Criminal Code, which reads as follows:

> "If two or more persons conspire to injure, oppress, threaten and intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his so having exercised the same, they shall be fined not more

than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office or place of honor, profit or trust created by the Constitution or laws of the United States."

The appellants contend that by the acts above complained of the defendants have injured and oppressed and threaten to continue injuring and oppressing the complainants in the free exercise and enjoyment of distinct rights and privileges secured to them by the laws of the United States, *i. e.*, the Transportation Act of 1920.

The principal rights and privileges secured to railroad employees under Title III of the Transportation Act are to have their grievances as to wages and working conditions heard by the Railroad Labor Board, determined upon the tests of fairness and reasonableness provided by the law and authoritatively and publicly adjudicated. The entire scheme of the alleged agreement between the Pennsylvania Railroad Company and the employee "representatives" chosen on its ballots was to frustrate that right and privilege: to deprive the employees of the right to submit such disputes to the Railroad Labor Board and to deprive the Board of an opportunity to pass upon such disputes.

The elaborate machinery arbitrarily established by the Company culminates in a so-called Joint Regional Board on which the carrier and employees are represented by equal numbers. It is this Board that is vested with the ultimate power of settling disputes

between the carrier and employees. The rules of the Joint Regional Board, devised by the company, call for a two-thirds vote of all members to carry any resolution or decision. Thus no decision can be made by the Board unless approved of by the carrier, and in the event of a disagreement between carrier and employees, the dispute remains unadjusted. No method is provided by the so-called rules of the Joint Regional Board for the disposition of any dispute on which the parties themselves fail to agree. This is fully admitted by the following testimony of Mr. Robert W. Massey, General Manager of the Pennsylvania Railroad Company:

> "Q. My question is, was there any provision for a final adjustment of such a dispute if the parties failed to agree upon a method of arbitration? A. Nothing specific.
>
> Q. Nothing in specific terms. Was it provided for in unspecific terms? A. I should say so; yes.
>
> Q. In what way? A. Just as I have stated, if you could not reach a decision at the second meeting of the reviewing committee, the matter then would be disposed of in a manner mutually agreeable to both the representatives of the employees and the representatives of the management.
>
> Q. And you assume in such a case that the employees and management would agree upon some method of disposing of it? A. Yes.
>
> Q. But no such method is provided? A. No.
>
> Q. In your organization? A. No."

POINT III.

The unlawful acts and conspiracy on the part of the defendants herein complained of violate the complainants' civil and statutory rights, and injure and oppress them in the free exercise and enjoyment of such rights.

The learned Circuit Court of Appeals on this point says:

> "It is evident that in enacting the Transportation Act of 1920, and, through it, affording means by which to prevent interruption of interstate commerce by labor disputes and strikes, the Congress had the public interest first in mind. It was more concerned in protecting the public than in conferring rights upon railroad employers and employees."

The protection of the public was undoubtedly the ultimate object and motive of Congress in enacting the Transportation Act, but the concrete methods which were set up by the Act for the attainment of that object were such as intended primarily to do away with the principal causes of friction between carriers and their employees by imposing upon each of them certain specific statutory duties intended to afford both parties an opportunity to compose their differences in conference or by arbitration, or in any event to secure a fair and impartial adjudication of the controversy on the merits and to lay the same before the public.

Title III of the Transportation Act was thus enacted for the benefit of the carriers and their employees as

well as the public. The methods and measures therein provided for the peaceful adjustment of disputes between employers and employees confer equal rights and duties upon both. Every duty imposed on the employees is by the same token a right of the employer, and conversely every duty imposed upon the employer becomes a right of the employees.

The shop craft employees of the Pennsylvania Railroad Company upon discharging the duties imposed upon them by the Transportation Act had the following definite statutory rights:

(1) To lay any disputes on the subject of wages and working conditions before the carrier, and to be met by the latter in conference in a *bona fide* effort to compose the dispute.

(2) To be represented in such conferences by representatives freely designated by themselves and authorized by them to confer.

(3) To refer any dispute not settled by agreement between them and the carrier to the Adjustment Board or the Labor Board as the case may be, either jointly with the carrier or upon their own application.

(4) To have a full and fair hearing on the issues in such dispute before such Board.

(5) To secure a decision on the merits of the dispute from such Board, and a public determination of the

Point III.

Board establishing fair and reasonable wages and working conditions in the manner prescribed by the Transportation Act.

On this point again it is respectfully submitted that the learned Circuit Court of Appeals erred when it held that Title III of the Transportation Act "did not disturb any of the rights which theretofore admittedly belonged to an interstate carrier and to its employees"; that "the carrier's right to deal with individual representatives of its employees remained. The right of employees, who are members of labor unions, to select their own conferences representatives and the right of their employer to restrict their selection to its own employees and exclude officers of labor unions was not abridged"; and again that "having power to decide a dispute which has either been submitted to it or of which it has taken control of its own motion, the Labor Board also has the power to decide beforehand who may properly represent the parties and to prescribe rules by which to ascertain their will in this regard. This power cannot be defeated by refusal of either party to obey its order. The action of the Labor Board by Decision No. 218 in finding the election of representatives by the Company's employees in the cases at bar void and prescribing a method and form of ballot for a new election was held by the Supreme Court to be within its power. *Pennsylvania Railroad Company* v. *Labor Board*, 261 U. S. 72, 83. *But this was the assertion of a right which the statute confers upon the Labor Board, not upon the parties to the dispute.* A right of employer or employees to insist that the other

proceed to a hearing pursuant to such rules as the Labor Board may have prescribed is not conferred upon either party to a dispute unless the statute makes it compulsory upon them" (italics are ours).

On the contrary, it is respectfully submitted that the whole object of Title III of the Transportation Act was to impose new duties upon both carriers and employees, *i. e.,* the duties to confer with each other and to submit disputes as to wages and working conditions for the decision and final adjudication of the Railroad Labor Board and that as above stated, each of such duties on the part of one of the parties were necessarily corresponding rights of the other party. The Railroad Labor Board as such has neither interests nor rights in connection with disputes between carriers and employees. It has certain powers to compose or adjudicate such differences. Whatever may have been the ultimate aim or motive of Congress in enacting Title III of the Transportation Act, it hardly can be questioned that its direct effect was to confer the rights above enumerated to the employees as new rights.

Each of these important rights and privileges conferred upon the employees by the Transportation Act has been violated by the defendants.

The defendants have denied the complainants the opportunity, privilege and right to confer with them on the dispute as to rules and working conditions, which was pending on the 24th day of May, 1921, and still remains undetermined; they have denied the complainants the right to designate by their own free choice representatives to confer with the carrier; they have

frustrated and destroyed the complainants' statutory right to refer the dispute to the Railroad Labor Board by entering into an alleged agreement with a small group of employees represented by spokesmen of the Company's own choice, and on the strength of such spurious "agreement" have taken the position that the dispute between them and their shop craft employees had been settled and decided and that there was therefore no issue referable to the Board; they have prevented the Railroad Labor Board from performing its statutory duty to decide the dispute and to establish fair and reasonable rules and working conditions by the same device.

On the undisputed facts in the record, the defendants have openly, almost boastfully, deprived their shop craft employees of all the rights and privileges conferred upon them by the Transportation Act and are still continuing to violate such rights.

POINT IV.

The complainants have sustained and are sustaining pecuniary losses and other damages by reason of the defendants' unlawful acts for which they have no adequate remedy at law.

The Bill of Complaint by Paragraph 53 thereof avers that by reason of the unlawful acts on the part of the defendants, above recited, "numerous members of System

Point IV.

Federation No. 90 have become detached from membership in the said System, its income from dues and per capita taxes is being reduced, its funds are dissipated and its functions, usefulness and very existence are seriously jeopardized." On the trial, Newton P. Good, President of System Federation No. 90, and one of the complainants herein, testified that owing to the acts complained of on the part of the defendants, the membership of the Federation had been reduced from approximately 60,000 in May, 1921, to about 45,000 in July, 1922, and that from the last mentioned date the organization had collected practically no dues or per capita taxes, particularly in view of the fact that such acts had forced a large portion of its membership into a strike (Record, pp. 138, 139, 153 and 154).

But even more substantial damage was sustained by individual members of System Federation No. 90 in whose behalf this action is also brought.

It is alleged in the Bill of Complaint and was established at the trial without contradiction, that the wages introduced by the defendants as a result of their alleged agreement with the representatives of the minority employees chosen on the Company ballots, resulted in many instances in substantial reductions from those prevailing before the making of such alleged agreements and from those established by the Railroad Labor Board and prevailing on all other roads (Record, pp. 219 to 222, 230 to 234, 246 to 249).

That the complainants have sustained and are sustaining money damages by reason of the defendants' acts has furthermore been found as a fact by the trial

Court as evidenced from the following excerpt from its opinion:

> "In order to have the full position of the plaintiffs before us, it should be further stated that there is a money difference, as well as other differences of value to the employees, between what they get under these agreements, on which the Company stands but which the plaintiffs repudiate as frauds and pretenses, and what the employees would presumedly otherwise receive. As an illustration of one difference, figures may be taken which, although perhaps not mathematically accurate, may be accepted to present the point. Under the railroad administration a craftsman was paid at the rate of eighty-five cents an hour. Thereafter the carriers, by an application to the Labor Board, had it reduced to seventy-two cents. Under the agreements on which the Company stands, there was a further reduction to sixty-eight cents" (Record, p. 264).

Money damages of a different nature were sustained and are sought to be recovered herein by other classes of the defendants' shop craft employees. The record discloses that during the acute stage of the controversy between the parties hereto, in May and June, 1921, almost one-half of the mechanical force of the Pennsylvania Railroad Company had been temporarily laid off or "furloughed." The employees thus "furloughed" were entitled to re-employment in the order of their seniority in service upon an increase in the working forces. Shortly thereafter the Company did increase such

working force, but refused to re-employ the furloughed members of System Federation No. 90 unless they consented in writing to the terms of the alleged agreement with the representatives chosen on the Company ballots. Several thousand of such employees refused to sign such agreements and were not re-employed. Other employees, who were not furloughed, were likewise requested to sign such consents, and discharged for their refusal to do so. The employees thus refused re-employment or discharged have sustained damages through loss of wages.

The shop craft employees of the defendant Company remaining at work furthermore sustained substantial damage incapable of computation or ascertainment and such as cannot be compensated by a money judgment. Such wages arise mainly from the inferior working conditions established by the "company agreement" under which they are forced to work. The abolition of the seniority rights established by the National Agreement is one instance in point. The seniority right secures to the employee a tolerably safe tenure of his job so long as he performs his duties faithfully and properly. In the absence of such an arrangement the employee's term of employment is left entirely to the arbitrary decision or whim of the Company official. Under the National Agreement an employee claiming to have been unjustly discharged had a right to a hearing and to a reinstatement with pay if his complaint was found justified. This was likewise abolished by the Company agreement. Other instances of deteriorated working conditions introduced by the Company

through its said alleged agreement are the re-introduction of the "piece work system," which the employees felt was a hardship, and numerous reductions in the grades of employment.

It does not call for a lengthy argument or citation of authorities to convince the Court that a Court of Law can offer no remedy for damages of this character.

On this point, the opinion of the trial Court states:

> "Another ground (of the motion to dismiss) is that the plaintiffs have an adequate remedy at law. The motion, so far as concerns this ground, is likewise denied, with the allowance of a further exception to defendants. The reasons for the ruling are too obvious to require statement" (Record, p. 255).

POINT V.

The complainants herein are proper parties to maintain this suit.

The party complainants are the Pennsylvania Railroad Company and Allied Lines Federation No. 90, which, on the uncontradicted proof herein, represented about 63,000 out of a total of 70,000 of the defendants' shop craft employees at the inception of the present controversy, May, 1921; about 45,000 of such employees in the reduced total of shop craft workers on the road, in July, 1922, and still represents substantially that number. System Federation No. 90 sues in behalf of itself and in

behalf of all its said members. It brings this action in its own name and also by the officers and members of the Executive Council of the organization, each of whom is an employee of the Pennsylvania Railroad Company and sues herein individually as well as officially.

The different classes of the defendants' shop craft employees adversely affected by specific unlawful acts of the defendants join in the suit through individual representatives of their respective classes, each of whom brings this action in behalf of himself and all other employees of the said Company similarly situated.

On this point the Court below said:

> "The grounds advanced by defendants to support a decree of dismissal are many, some of which may be disposed of without discussion, leaving the main ground to be treated more at large. One ground is that these plaintiffs have no right to maintain this Bill as a representative or class Bill. The dismissal of the Bill on this ground is refused. The same, or a substantially like ground, was urged in the case of *Fenstemacher* v. *R. R. Co.* (unreported), and found to be untenable. To that ruling we adhere, with exception allowed to defendants" (Record, pp. 254-255).

Under the equity rules and the numerous and uniform adjudications on the subject, the Court could not have held otherwise. Equity Rule 37 provides in part:

> "All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs * * *."

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Equity Rule 38 provides:

> "When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole."

The principles laid down in Rules 37 and 38 are elucidated and discussed by Mr. Justice Lamar in *Brown v. Guarantee Trust Co.*, 128 U. S. 403, in this illuminating language:

> "It is not indispensable that all the parties should have an interest in all the matters contained in the suit, but it is sufficient if each party has an interest in some material matters involved in the suit, and they are connected with the others. Moreover, if all the parties plaintiff to a suit have a common interest in the subject matter of the litigation, it is not necessary that they should all be interested to the same extent. * * * If the object of the suit be single, but it happens that different persons have separate interests in distinct questions that arise out of that single object, such persons should be brought before the court in order that the suit may conclude the whole object. Similarly, a bill cannot be considered multifarious by reason of the fact that it asks for some additional relief incidental or contributory to the complete solution of the whole controversy and to the proper adjudication of the rights of the respective parties in regard to the principal subject-matter of the suit, there being no inconsistency

between the different sorts of relief asked for. * * *"

Similarly the doctrine is stated in *Corpus Juris* as follows:

> "Where the requisite community of interest exists, it is immaterial that plaintiffs are interested in different degrees and to an unequal extent. Several plaintiffs may join, although their interests are separate, where the relief sought by each involves the same question, requires the same evidence, and leads to the same decree" (21 *C. J.* 309).

Minnesota v. *Northern Securities Co.*, 184 U. S. 199;
Gregory v. *Stetson*, 133 U. S. 579;
Commodous Point Terminal Co. v. *Hudnall*, 283 Fed., 150;
Van Wagenern v. *Reed, et al.*, 287 Fed. 148;
Curran, et al. v. *Campion, et al.*, 85 Fed. 67;
Jones v. *Missouri Edison Electric Co.*, 144 Fed. 765;
Williams v. *Crabb*, 117 Fed. 193.

Nor is the complainants' right to maintain this suit impaired by the fact that a large number of members of System Federation No. 90 are at this time on "strike" against the defendant Company. On this subject the Bill of Complaint avers that the members of System Federation No. 90 continued at work so long as there was any hope or expectation of the Company abandoning its lawless policy above described, but when the Company

expressed a fixed determination to continue and perpetuate its unlawful plan and scheme to evade the provisions of the Transportation Act and the decisions of the Railroad Labor Board, System Federation No. 90 submitted the following question to a referendum vote of its members, to-wit:

> "In the event the Pennsylvania Railroad System refuses to comply with Decision No. 218 of the United States Railroad Labor Board, shall a strike be authorized on a day to be later set?"

The question was answered in the affirmative by an overwhelming majority of the members, and thereafter on July 1st, 1922, System Federation No. 90 authorized its members to cease working for the Company until the latter would comply with the provisions of the Transportation Act and the lawful decisions of the Railroad Labor Board.

About 30,000 to 33,000 members of the Federation took advantage of such authorization and went on strike, while about 12,000 Federation members remained at work (Bill of Complaint, Paragraphs 47 and 48. Answer, Forty-seventh and Forty-eighth Paragraphs. Testimony of Newton P. Good, Record, p. 138).

It will thus be noted:

(1) That by the language of the resolution adopted, the strike was not peremptorily ordered but merely authorized.

(2) That while a majority of the members of System

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Federation No. 90 went on strike, a substantial portion of them remained at work, and this action is brought in behalf of both classes.

(3) That a strike was based solely upon the refusal of the Pennsylvania Railroad Company to comply with "Decision No. 218" of the United States Labor Board; that its object was to enforce compliance on the part of the Company with the said ruling of the Labor Board, and with the provisions of the Transportation Act; that the striking employees held themselves in readiness at all times to resume their work as soon as the Company would accord them their statutory rights under the Transportation Act, and on repeated occasions so informed the defendant Company.

The appellants contend that under the circumstances the relation of employer and employees subsisting between the parties was not terminated by the strike. It was only temporarily suspended with respect to such employees as went on strike. The rule is stated in the Ruling Case Law (16 R. C. L., 435) in the following language:

> "A strike is, however, ordinarily not intended to be a complete severance of relation between the employees and the employer, but simply a means of enforcing compliance with a demand made on the employer. By withdrawing temporarily from the service, the employees seek to induce the employer to acquiesce in their demands and to reinstate them in the service under the conditions that they seek to impose. Although they cease to

work, the employees intend to retain their positions. In fact a strike is frequently defined as a cessation of work by a body of workmen as a means of enforcing compliance with a demand made on their employer. *Arthur* v. *Oakes*, 63 Fed. 310; *Kemp* v. *Division No. 241, Amalgamated Assn. of St., Etc., Ry.*, 255 Ill. 213."

In his concurring opinion in *Iron Moulders' Union* v. *Allis-Chalmers Co.*, 166 Fed. Rep. 45, at page 52, Judge Grosscup discusses the precise point and reaches the following conclusions:

> "A strike is cessation of work by employees in an effort to get for the employees more desirable terms. A lockout is a cessation of the furnishing of work to employees in an effort to get for the employer more desirable terms. *Neither strike nor lockout completely terminates, when this is its purpose, the relationship between the parties.* The employees who remain to take part in the strike or weather the lockout do so that they may be ready to go to work again on terms to which they shall agree—the employer remaining ready to take them back on terms to which he shall agree. Manifestly, then, pending a strike or lockout, and as to those who have not finally and in good faith abandoned it, a relationship exists between employer and employee that is neither that of the general relation of employer and employee, nor again that of employer looking among strangers for employees, or employees seeking from strangers employment * * *."

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A similar view is expressed in *Farmers' Loan & Trust Co.* v. *Northern Pac. R. R. Co.*, 60 Fed. 803. The Court after considering the various definitions of the word "strike," says (p. 819):

> "Whichever definition may be preferred—and possibly no one of them is precisely accurate,—there are running through all of them two controlling ideas: First, by compulsion to extract from the employer the concession demanded; second, a cessation of labor, but not the abandonment of employment. The stoppage of work is designed to be temporary, continuing only until the accomplishment of the design and upon its accomplishment the resumption of employment. *The cessation of labor is not a bona fide dissolution of contractual relations and an abandonment of the employment, but is designed as a means of coercion to accomplish the desired result.*"

In *Tri-City Central Trades Council, et al.* v. *American Steel Foundries*, 238 Fed. 728, 151 C. C. A. 578, construing the Clayton Act, the Circuit Court of Appeals, Seventh Circuit, holds:

> "A labor union, of which former employees engaged in a strike were members, is not a mere intermeddler, whose interference with other employees may be restrained, when only lawful means are used, since a strike does not fully terminate the relationship between the parties, but creates a relationship neither that of general employer and employee, nor employers and employees seeking work for them as strangers."

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In *Greenfield* v. *Central Labor Council of Portland and Vicinity, et al.,* 192 Pac. 783, the precise point under discussion was passed upon by the Court in the following unmistakable language:

> "Because a strike was declared and the union employees walked out, plaintiff claims that the relation of employer and employee ceased to exist, that there was no longer 'any dispute concerning terms or conditions of employment,' wherefore Chapter 346, Laws 1919, would not apply. Counsel have not cited, and we have not found, any authority which sustains that contention, and where that question has been decided the authorities are against it. On this point, Section 20 of the Clayton Act, 38 Stat. at L. (U. S. Comp. Stat., Sec. 1243d) is identical with Section 2 of Chapter 346, Laws 1919."

The rule above discussed is interesting by an application of the general principal of law in the construction of contracts that when the obligation of performance by one party presupposes a corresponding obligation on the part of the other, the neglect or refusal to perform by one of the contracting parties dispenses with the obligation of performance by the other, and of the further rule that in case of such breach of contract, the aggrieved party may treat the rescinded contract as still in force while the party breaching the contract does not have that privilege.

Roehm v. *Horst,* 178 U. S. 1;
O'Neil v. *Supreme Council Am. L. of Honor,* 70 N. J. L. 410;

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J. W. Brennan Construction Co. v. *State*, 191 N. Y. S. 253;
Fulton v. *Canno*, 192 N. Y. S. 804.

In any event, however, the question is not determining upon the right of complainants to maintain this suit. It appears without contradiction that between July 1, 1921, when the alleged agreement between the Company and the "representatives" of employees chosen on its ballot went into effect and July 1, 1922, when the strike was declared, all members of System Federation No. 90, complainants herein, were compelled to operate under the terms of such alleged agreement and to accept the reduced wages fixed thereby. They are thus entitled to recover the difference between the wages due them and the wages paid them during the period of one year entirely regardless of the question whether the strike subsequently terminated their status of employees of the Company.

Besides, as above stated, this action is brought not only on behalf of the Company's striking employees but also on behalf of a large number of its employees who did not go on strike but had continued working for the Company to this date.

POINT VI.

The complainants are entitled to the injunctive relief prayed for herein.

The complainants herein ask for a decree in substance enjoining and restraining the defendants from continuing the following acts and conduct:

(1) From enforcing such provisions as to wages and working conditions in the defendants' alleged agreement with the "representatives" chosen on the company ballots as established inferior conditions with respect to wages and working rules to those in force and effect on June 30, 1921;

(2) From continuing to deal or contract with such alleged representatives as representatives of the shop craft employees of the company designated and authorized by them to confer with the carrier under the provisions of the Transportation Act;

(3) From financing, supporting and controlling the alleged organizations of the company's shop craft employees and from interfering with such shop craft employees in the free choice of their representatives for the purposes of the Transportation Act;

(4) From refusing to recognize System Federation No. 90 as the representative of the company's shop craft employees duly designated and authorized to confer and act in their behalf for the purposes of the Transportation Act;

(5) To enjoin the defendants T. H. David, W. J. Hilton, Charles Mode, J. E. Cavey and C. G. Larson from acting and holding themselves out as representatives of the company's shop craft employees duly designated and authorized by the latter to confer and contract with the defendants under the terms of the Transportation Act.

The complainants' right to each and all forms of the injunctive relief above set forth follows logically and inevitably from the theory, above discussed, that all the acts so sought to be enjoined are in violation of the positive commands of the Transportation Act, and therefore unlawful; that such unlawful acts are continuous and the defendants threaten to persist in them; that by reason of such acts, the complainants have sustained and are sustaining pecuniary and other damages for which there is no adequate remedy at law.

POINT VII.

The complainants herein are entitled to money damages and to a decree ordering that an accounting be taken of such damages.

Upon this branch of the case the undisputed facts are as follows: At the date of the enactment of the Transportation Act, March 1, 1920, the wages of all classes of railroad employees were definitely fixed by the national agreement.

Point VII.

The Transportation Act by Section 312 provided that

> "Prior to September 1, 1920, each carrier shall pay to each employee or subordinate official thereof wages or salary at a rate not less than that fixed by the decision of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act, in effect in respect to such employee or subordinate official immediately preceding 12.01 A. M., March 1, 1920."

At the time of the enactment of the Transportation Act a general wage dispute was pending between the carriers and their employees, including the parties hereto, and the act provided for methods of adjusting such disputes and all futures wage disputes between the carriers and their employees. Under these terms, wages may be re-adjusted in one of the following three ways:

(1) By a voluntary agreement between the parties reached in conference between representatives of the carrier and representatives of the employees designated and authorized by them for that purpose (Sec. 301 of the Transportation Act);

(2) By the mutual acceptance of a decision of the Railroad Labor Board on a wage dispute rendered after a full hearing of all parties directly concerned and establishing fair and reasonable wages in the light of the tests specified by the Act (Sec. 307 of the Transportation Act);

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(3) By the sole action of the carrier after, but not before; rejecting a decision of the Railroad Labor Board as above set forth or by the sole action of the employees in forcing a wage rate upon the carrier different from the one established by the Board but likewise after such decision has been rendered and rejected (Sec. 313 of the Transportation Act, *Pennsylvania R. R. Co.* v. *U. S. Labor Board, supra*).

This status with respect to existing wages and working rules on the Pennsylvania R. R. System was not only a matter of express legal enactment but also based upon agreement between the parties. Through their mutual dealings, the parties hereto, the Pennsylvania R. R. Co. as well as its shop craft employees assumed and assured each other that they would carry out the provisions of the Transportation Act and abide by the decisions of the Railroad Labor Board. It is worthy of note in this connection that the Pennsylvania R. R. Co. throughout the dispute which led up to this action never frankly took the position of rejecting any ruling or decision of the Railroad Labor Board, but on the contrary at all times maintained that it accepted and acted upon such decisions, except that it placed its own construction on them. Throughout the conference with representatives of System Federation No. 90 on May 24, 1921 (Plaintiff's Exhibit No. 3, Record, pp. 307-402), Mr. R. V. Massey, the authorized spokesman of the defendant company, stoutly maintained that the ballots prepared by the company for submission to the shop craft employees were strictly in accordance with decision No. 119 of the Railroad Labor Board, and that position was consist-

ently adhered to by the company in all subsequent discussions on the subject.

When the Railroad Labor Board by decision No. 2 rendered July 20, 1920, increased the wages of railroad employees, including those of the shop craft workers, both sides accepted the said decision and the defendant company paid the increased rates. On the other hand, when the said Board by decision No. 47, rendered on the 1st day of June, 1921, reduced the wages of such employees 8 cents per hour, both sides again accepted the decision and the employees continued working at the reduced wage.

Some time in the month of August, 1920, the complainants were informed that the defendant company intended to change the prevailing rules and working conditions without resorting to the methods provided by the Transportation Act. The complainant N. P. Good in behalf of System Federation No. 90 and the members of the same, wired to each general manager of the company inquiring whether such information was true and adding that if it were, the employees would consider it a violation of the existing agreement and the decisions of the Labor Board, and suspend work. To this the said Managers of the defendant company by letters of uniform tenor replied as follows:

> "Dear Sir:
>
> Your telegram of August 30th:
>
> Doubtless you are aware of the fact that the railroad representatives advised the United States Railroad Labor Board that the railroads would

comply with the decision of that Board in regards to working conditions, pending a hearing on the subject to be held by the Board at an early date.

Decision No. 2 of the United States Railroad Labor Board provides that pending the presentation for consideration and determination of the question pertaining to the continuation and modification of such rules, conditions and agreements, no changes shall be made except by agreement between the carrier and employees concerned.

We do not contemplate any changes pending the decision of the United States Railroad Labor Board unless, in the meantime, our officers and such employees as may be concerned, may, by agreement, desire to do so.

Yours truly,

.....

General Manager."

(Bill of Complaint, Paragraphs 23 and 24, Answer Twenty-third and Twenty-fourth Paragraphs).

It was on this unequivocal statement and representation on the part of the defendant company that it would make no changes pending the decision of the Railroad Labor Board except by agreement with its employees that the members of System Federation No. 90 remained at work.

The wages established and prevailing on the date of the enactment of the Transportation Act, and as modified by the two succeeding decisions of the Railroad Labor Board above mentioned, must thus be considered to have

remained in full force and effect as a matter of law and contract unless they were modified by one of the three methods above enumerated.

The undisputed fact is that after Decision No. 147 of June 1, 1921, the Railroad Labor Board has at no time rendered any decision upon the disputes between defendant company and its shop craft employees or attempted to establish fair and reasonable wages for such employees. The wage reductions proven to have been made by the company after the said date can therefore not be justified either on the theory of the Railroad Board's sanction or on the theory of the company's right to fix wages arbitrarily after rejecting a decision of the Board. If such wage reductions can be upheld at all, it can only be on the theory that they were established by voluntary agreement between the carrier and the shop craft employees arrived at in conference as prescribed by Sec. 301 of the Transportation Act.

This in fact is the position taken by the defendant company. Throughout the answer to the bill of complaint herein and throughout the trial, the company maintains and maintained that the alleged agreement made between it and the representatives chosen on its ballot was a valid agreement, that it satisfied all requirements of the Transportation Act and that the terms provided therein were binding upon all of its shop craft employees.

The validity or invalidity of the alleged agreement between the company and the representatives of shop craft employees chosen on its ballot is therefore determining on the question raised under this point.

Point VII.

The appellants maintain that the alleged agreement entirely failed to meet the requirements of the Transportation Act; that it was conceived and executed as a trick and device to evade the law; that it was fraudulent, null and void and had and has no binding effect upon any employee other than the signatories themselves.

The agreements between the carriers and employees which the Transportation Act considers as deciding a dispute between the parties so as to preclude the interposition of the Labor Board upon the application of either party or on its own motion, are agreements described in Section 301 of the Transportation Act, *i. e.*, agreement arrived at between representatives of the carrier and representatives of its employees, designated and authorized by the latter to confer, after consideration of such dispute in conference. As mentioned above this requirement by inevitable inference of law implies among other things (1) the free and voluntary act, (2) of all or at least the substantial majority of the employees directly interested in the dispute, (3) acting through representatives freely designated by them for that purpose.

It appears without contradiction that the shop craft employees of the Pennsylvania Railroad, to the extent of about 90% of their total number, were members of System Federation No. 90; and that the company refused to deal with that organization; that upon a vote taken among such employees to designate their representatives to confer with the carrier, only 3,480 voted on the company ballots providing for scattered and divided individual representation while 37,238 voted in

favor of representation by System Federation No. 90 and that the company disregarded the vast majority of its shop craft employees and proceeded to deal and contract with an avowedly insignificant minority; that the company did and does impose that "agreement" upon all of its shop craft employees in the face of the specific ruling of the Railroad Labor Board that the provision for conferences contained in the Transportation Act shall be deemed equitably complied with only "after and when the representatives of a majority of the employees of each of the several classes directly affected shall have conferred with the management"; that the vast majority of the shop craft employees not only did not acquiesce in the alleged agreement made by the unauthorized minority representatives but expressly protested against such terms and declared that they would not be bound by it.

The alleged agreement is furthermore vitiated for another conclusive reason. It is admitted that the alleged organization of shop craft employees with whom the company contracted was not only created upon a plan contrived by the company itself but that it was and is being maintained at the expense of the company. The said alleged organization as a matter of fact has no real existence or function. It has no dues-paying membership or revenues of any kind. The company prepares its literature and prints and distributes the same at its own expense, it pays the office rents and pays the salaries and expenses of the alleged officers and representatives of the alleged organization. In all conferences to consider disputes between the carrier and its

employees, both sides, the representatives of the carrier as well as the alleged representatives of the employees are equally in the pay of the company and dependent upon it, although the interests and contentions of the two sides to such disputes of necessity must be divergent, even antagonistic. It is an elementary rule of law that the agent must look for compensation to his principal and not to the otherside and that all agreements made by agents who are paid by and owe their position and allegiance to the other side are inoperative and void for fraud.

The agreement alleged to have been made between the defendant company and the unauthorized representative of its minority employees thus has no legal existence and effect and consequently the agreement between the parties in force prior to July 1, 1921, and created by law and by the voluntary consent of the parties is still in full force and effect and determines the wages to which the shop craft employees were entitled ever since that date.

The fact that such employees accepted wages at the lower rate does not constitute a waiver in law and does not estop them from recovering the full amount.

This rule applies to all cases where wages are fixed directly or indirectly by statutory or other legal authority.

100 Wash. 642

In *Larson* v. *Ries*, 171 Pac. R. 1037, the action was to recover the difference between a minimum wage rate established by a commission under statutory authority and the lower wage actually paid by the employer. The

Court held that the plaintiff could recover in spite of the fact that she had voluntarily accepted the lower rate.

In *State* v. *Benn*, 69 So. W. Rep. 484, the Court held that the laborer cannot contract away or waive any benefits conferred upon him by statute. 95 Mo. app. 516

A case directly in point is that of *Rodes* v. *New Orleans Gt. No. R. R. Co.*, decided by the Supreme Court of Mississippi in April, 1922 (91 So. 281). 129 Miss. 78

The facts in the case as stated in the opinion were as follows:

> The appellant Ed. Rodes, was the plaintiff in the Court below, and filed suit in the Circuit Court against the appellee, alleging that the appellee is a common carrier, and that for several years past the appellant has been employed as a section laborer, or track laborer, in maintaining its railroad tracks, and that appellant was so employed continuously between January 1, 1921, and June 30, 1921. It is further alleged that the rate of pay of all laborers on said railroad was fixed by the United States Railroad Labor Board on July 20, 1920, at the sum of 36½ cents per hour, and that the fixing of said rates was in all respects legal and just and was authorized by the act of Congress commonly known as the Transportation Act of 1920 (41 Stat. 456), and that the railroad company was bound thereby, and was compelled under the law to recognize the same, and to pay the appellant according to said

rate fixed by said board and that the railway company did recognize the legality thereof, and did pay the plaintiff according to the same up to January 1, 1921, and since said date has failed to pay the plaintiff according to said rates; that said rates of pay fixed by said board remained unchanged continuously from July 20, 1920, to June 30, 1921, and that between these dates of January 1, 1921, and June 30, 1921, appellant worked for the appellee in the capacity aforesaid a total of 1,449 hours, for which labor he was entitled to receive 36½ cents per hour under the decision of said Labor Board, but that he had only been paid 20 cents per hour for said time, leaving due him by the appellee the sum of $239.08 which is past due, owing and unpaid, and which the appellee withholds and refuses to pay to plaintiff's damage, etc.

The Court upheld the plaintiff's right to recover, saying in part:

> "The legal effect of the action of the board is to fix for the time being (a temporary period) the wages and salaries of the employees until the parties can agree upon such wages or salaries, or can make other arrangements with other men for the carrying on of the business of the carrier. *It has the effect, in our opinion, of giving a right of action against the carrier by the employee or official for the salary so fixed under the provisions of the act if services are performed thereunder, and the courts are open for the enforcement of this obligation.*"

Point VII.

The rule is analogous to that which governs the right of public officers and civil service employees whose salaries are directly or indirectly fixed by law.

The general rule applicable to such cases is stated in R. C. L. (Vol. 22, p. 538) as follows:

> "As a general rule an agreement by a public officer to render the services required of him for less than the compensation provided by law is void as against public policy. * * * Even the actual receipt of less than the legal rate of compensation for the services rendered by a public officer does not estop him from recovering the full amount which may by law be due to him."

Similarly in 29 *Cyc.* 1429:

> "If an officer accepts an office whose compensation it has been attempted illegally to reduce, and receives the compensation at a reduced rate, he is not estopped from claiming the balance as fixed by law."

See also:

Goldsborough v. *U. S.*, Taney, 80;
Glovey v. *U. S.*, 180 U. S. 595;
Gallaher v. *Lincoln*, 63 Neb. 339, 88 N. W. 505;
Nelson v. *Superior*, 109 Wis. 618, 85 N. W. 412;
Kehn v. *State*, 93 N. Y. 291;
Clark v. *The State*, 142 N. Y. 101.

POINT VIII.

For all the reasons above set forth the decree of the Circuit Court of Appeals should be reversed with costs.

December 12, 1924.

DAVID WALLERSTEIN,
MORRIS HILLQUIT,
Counsel for Appellants.

In the Supreme Court of the United States.

OCTOBER TERM, 1924. NO. 661.

Pennsylvania Railroad System and Allied Lines Federation No. 90, Executive Council of Pennsylvania Railroad System and Allied Lines Federation No. 90, et al., *Appellants,*

vs.

The Pennsylvania Railroad Company, Samuel Rea, W. W. Atterbury, Elisha Lee, George L. Peck, E. T. Whiter, C. S. Krick, M. W. Clement, T. B. Hamilton, Benjamin McKeen, I. W. Geer, P. F. Smith, Jr., T. H. Davis, W. J. Hilton, Charles Mode, J. E. Cavey and C. G. Larson, Appellees.

BRIEF FOR APPELLEES.

The Enforcement of Title III of the Transportation Act is the Basis of the Bill.

The appellants begin their argument by the assertion on page 45 of their Brief: "At the outset it should be noted that this is not an action to enforce a decision of the Railroad Labor Board, but one to enjoin the violation of an express statutory provision," and on page 49 that "the defendants have violated, are violating and threaten

to continue violating a positive statutory law, *i. e.* the Transportation Act of 1920." Thus it appears that the enforcement of Title III, Sections 301 and 302, of the Transportation Act is the basis of the complainants' Bill, the prayers therein and the argument in support thereof.

The distinction attempted to be made throughout the Brief for the appellants between a general policy or practice deduced from the Transportation Act, and the remedies, powers and rights therein created, is unsubstantial and affords no basis, it is submitted, for any of the relief prayed for in the Bill. All of those prayers must in their last analysis be referred to the express provisions of the statute, and no relief can be sustained based upon any other ground, and particularly upon conceptions of the policy of the Act not expressed therein and indicated only in congressional discussion or by suggestions of the benefits of the enforcement of a method of mandatory control between employer carriers and employees, had the Act been in different terms and provided other methods for its administration. As stated by Justice Holmes in Pine Hill Co. *vs.* United States, 259 U. S. 191, 196: "It is a delicate business to base speculations about the purposes or construction of a statute upon the vicissitudes of its passage."

The differences between the carrier and its employees which are made the prime subject of the Bill and of the argument upon the several propositions advanced by the appellants, arose from the question as to the obligation of the carrier to accept as representatives of the employees, for the purposes of conference under the provisions of the Transportation Act, certain labor organizations then constituted of its employees, and the election and action of individuals duly chosen as representatives of the employees with whom binding and legal agreements with reference to rules, regulations and wages were made (Record, page 157). The action of the carrier complained of, was that it declined to accede to and be bound by decision No. 218 of the Labor Board directing that the ballots

should contain the names of labor organizations as representatives. The propriety of its action in this respect has been the subject of consideration in certain cases arising in the District Court for the Eastern District of Pennsylvania, (Fenstemacher *vs.* Pennsylvania Railroad Co., 296 Fed. 213; Brotherhood of Railway &c. Employees *vs.* Pennsylvania Railroad Co., 296 Fed. 218), and in this case was definitely, clearly and finally decided by this Court in The Pennsylvania Railroad Company *vs.* United States Labor Board, 261 U. S. 72.

The application of the complainant in that case was that the Labor Board be restrained from publishing under Section 313 of Title III of the Transportation Act that the Railroad Company had violated the Board's decision under that Act known as decision No. 218. The only power given the Labor Board for violation of any decision made by it is to make public its decision. (Transportation Act, Title III, Sec. 313). Upon this question this Court said (page 79):—

> "The decisions of the Labor Board are not to be enforced by process. The only sanction of its decision is to be the force of public opinion invoked by the fairness of a full hearing, the intrinsic justice of the conclusion, strengthened by the official prestige of the Board, and the full publication of the violation of such decision by any party to the proceeding The evident thought of Congress in these provisions is that the economic interest of every member of the Public in the undisturbed flow of interstate commerce and the acute inconvenience to which all must be subject by an interruption caused by a serious and widespread labor dispute, fastens public attention closely on all the circumstances of the controversy and arouses public criticism of the side thought to be at fault. The function of the Labor Board is to direct that public criticism against the party who, it thinks, justly deserves it."

This Court then discussed fully the question of who were the proper representatives of the employees, saying (page 84):—

> "The counsel for the Company insist that the right to deal with individual representatives of its employees as to rules and working conditions is an inherent right which cannot be constitutionally taken from it. The employees, or at least those who are members of the labor unions, contend that they have a lawful right to select their own representatives, and it is not within the right of the Company to restrict them in their selection to employees of the Company or to forbid selection of officers of their labor unions qualified to deal with and protect their interests. This statute certainly does not deprive either side of the rights claimed."

The Court then discussed the provision under Title III for action by the Board and continues (page 84):—

> "The jurisdiction of the Board to direct the parties to do what it deems they should do is not to be limited by their constitutional or legal right to refuse to do it. Under the Act there is no constraint upon them to do what the Board decides they should do except the moral constraint, already mentioned, of publication of its decision. * * * The statute does not require the Railroad Company to recognize or to deal with, or confer with labor unions. It does not require employees to deal with their employers through their fellow employees. But we think it does vest the Labor Board with power to decide how such representatives ought to be chosen with a view to securing a satisfactory cooperation and leaves it to the two sides to accept or reject the decision."

So far, therefore, as the appellants rest their Bill upon the allegation that the Company and its officers could not deal with the representatives of the employees

chosen in the manner set out in the Bill, it is established, it is clear, that there is no basis upon which such allegation can be sustained, this Court by the decision above cited having definitely ruled to the contrary.

Section 312 of the Transportation Act is as follows:—

> "Sec. 312. Prior to September 1, 1920, each carrier shall pay to each employee or subordinate official thereof wages or salary at a rate not less than that fixed by the decision of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act, in effect in respect to such employee or subordinate official immediately preceding 12.01 A. M. March 1, 1920. * * *"

The wages in effect on March 1st, 1920, were fixed by the National Agreement and could not be decreased prior to September 1st, 1920. (Sec. 312 of the Transportation Act, *supra*). Between March 1st, 1920, when Federal Control ended, and April 15th, 1920, when the Labor Board was organized, many conferences were held between the heads of labor organizations, signatories to the National Agreement, and the carriers, but such conferences were not successful. The Labor Board after its organization on April 15th, 1920, proceeded to deal with these disputes and by decision No. 2 rendered on July 20th, 1920, increased the wages of the employees of the classes described in the Bill 13 cents per hour (Record, page 33), but postponed decision upon the dispute on rules and working conditions until April 14th, 1921, when by its decision No. 119 (Record, page 41) it continued the existing rules until July 1st, 1921. The Labor Board also declared by its decision of July 20th, 1920, that no changes should be made in the rules, working conditions and agreements in force under the authority of the United States Railroad Administration "except by agreement between the carrier and employees concerned" (Record, page 36) and by de-

cision No. 119 directed that officers and Labor organizations should designate representatives to confer together. (Record, page 44). Representatives of the Company and of Federation No. 90 met in Philadelphia on May 24th, 1921, with a view to composing their differences, but failed to agree upon a form of ballot to be sent out to the employees, and it was this difference which started the controversy between the parties. Thus all of the preliminary steps leading up to a final decision of the Labor Board were taken. The conference was held and the parties disagreed, and these constituted all of the necessary preliminary steps required by Title III of the Transportation Act. These facts are clearly found in the opinion of the Circuit Court of Appeals. (Record, pages 493, 494, 495).

After the conference of May 24th, 1921, the Company and Federation No. 90, held elections for representatives, each using its own form of ballot (Record, pages 196, 203), after which the Company entered into agreements with the representatives of its employees fixing their wages effective July 1st, 1921.

The Appellants again brought the matter before the Labor Board which on July 26th, 1921, decided (Decision 218, Record, page 71) that the elections were illegal and directed that new elections should be held, prescribing the form of ballot which permitted the elections of Labor Organization representatives, which decision the Company declined to recognize, and in which course it has been supported by the decisions of this Court.

The claims for compensation for damages or wages as stated in the bill, (Record, pages 87, 88, 96, 97) and as summarized by the Circuit Court of Appeals in its Opinion (Record, page 496) are:—

First:—By certain employees who being on furlough refused when they were notified, to return to work on the scale of wages effective July 1st, 1921, for damages in the amount for wages they would have received had they been employed on the old scale of wages. (Record, pages 162, 218, 226.)

Second:—By certain employees who worked under the scale effective July 1st, 1921, from that date to July 1st, 1922, and then went on strike and left the service of the Company for an amount equal for that period to the difference between the wages on the old scale and those established by the new scale. (Record, page 249.)

Third:—By certain employees who have continued to work under the wages established July 1st, 1921, for an amount equal to the difference between the wages on the old scale and those on the new scale from July 1st, 1921, to the date of the filing of the bill.

There are thus two kinds of claims, one for damages for failure to receive wages for work which was not done and the other for higher wages than those agreed upon and accepted by the claimants.

The latter is stated to be for $6,000,000 (Record, pages 87, 88); the former is estimated at a much larger sum.

As to the claims of former employees who refused to work no right to damages can arise unless there was an enforcible contract with them to continue them in the service of the Company, and there is no evidence of such a contract; and in any case as to them and as to the former employees and employees who seek to recover the difference between the wages received by them and those formerly paid, they must establish that the latter are still in force. It has already been shown that this Court has held that the decisions of the Labor Board are not enforcible by process, therefore, the Company cannot be compelled to pay the scale of wages established by the decision of the Board of June 1st, 1921, which was lawfully altered by the agreement between the carrier and the representatives of the employees, effective July 1st, 1921. Upon this subject the District Court said (Record, page 269):—

> "The view we take is, as already expressed in several different forms, that the only rights or duties we can consider are the legal rights or legal duties of the parties. These arise in this case wholly out of contracts. The National Agreement and the

modification by the Labor Board which followed it, having been accepted and followed by the defendants, there would be an implied contract, on its part, to pay its several employees accordingly. There was no agreement to continue these payments for any length of time. When, therefore, the defendants refused to continue the payments and announced that it would not thereafter pay them, but that payments would be on another and different basis, and since that time it has so paid them, and the individual employees have accepted the payments, we cannot find that there was a contract or is any legal obligation of the defendant Company to pay more."

The Defendants have not Violated any Provision of the Transportation Act of 1920.

Appellants' contention at page 49, *et seq.*, of their Brief is that defendants have violated, are violating and threaten to continue violating a positive statutory law, *i. e.*, the Transportation Act of 1920. It is conceded by appellants that the Courts cannot enforce a decision of the Labor Board (Appellants' Brief, page 58) by reason of the decision of this Court to that effect in *The P. R. R. Co.* vs. *U. S. Labor Board*, 261 U. S. 72, but the argument is made that Section 301 of the Transportation Act, making it the duty of all carriers to confer with their employees' representatives, is mandatory and may be enforced by the courts. There are two answers to this contention: First, that the Company did confer with Federation No. 90 and failed to agree, as pointed out *supra*, and Second, that the Statute does not require the Company to confer with Federation No. 90 as shown by the following language of this Court in *The P. R. R. Co.* vs. *Labor Board*, *supra*, at page 85:—

"The statute does not require the railway company to recognize or to deal with, or confer with labor unions. It does not require employees to deal with their employers through their fellow employees."

And as stated in the opinion of the Circuit Court of Appeals (Record, page 498) as follows:—

> "A right of employer or employees to insist that the other proceed to a hearing pursuant to such rules as the Labor Board may have prescribed is not conferred upon either party to a dispute unless the statute makes it compulsory upon them. If compulsory, and if, as in this instance, the employer should refuse to obey the rules which the Labor Board has prescribed for an election of representatives and otherwise should fail to submit itself to the Labor Board, then by implication the statute might raise a right in the employees to have the dispute heard in the manner the Labor Board has provided and, conceivably, they might obtain enforcement of that right by legal process. But we find nothing in the statute which makes it compulsory upon the employer to confer with the representatives of the employees or further to contest the matter before the Labor Board."

The Clayton Act Expressly Forbids an Injunction.

The theory of appellants' case is that this is a dispute between a carrier employer and its employees, involving wages and working conditions and that Section 301 of the Transportation Act imposes a mandatory duty on the carrier to confer with its employees' representatives on any such dispute. On this theory appellants base their prayer for an injunction. The prayers of the bill are, *inter alia*, that an injunction be issued restraining the defendants from (1) continuing the new wage scale, (2) recognizing the representatives elected by the employees and (3) refusing to recognize, confer and deal with System Federation No. 90 as representative of the Company's employees. The appellants ignore the fact that Congress by Section 20 of the Clayton Act (Act of October 15th, 1914, Chapter 323, 6 Fed. Stat. Ann.

2nd Ed., page 141), expressly prohibited any restraining order or injunction in such a dispute between employer and employees. This section of the Clayton Act has been held to apply to disputes between an interstate carrier and its employees (Foss, *et al., vs.* Portland Terminal Co., 287 Fed. 33; Michaelson *vs.* United States, 45 Sup. Ct. Rep. 18) where an application for an injunction against striking employees is made, and there seems to be no reason why it should not apply also where the situation, as here, is reversed, and the striking employees seek to enjoin the employer.

There is no Conspiracy by or Among the Defendants.

Appellants' Point II, discussed at page 84, *et seq.*, of their Brief is that the acts of defendants set forth in the Bill of Complaint constitute a conspiracy.

The charge and allegation of conspiracy is founded upon the action of the carrier defendant wherein it conducted an election for representatives and created the rules, regulations and wages in conference between them and the representatives of the carrier. Unless the carrier was bound to obey decision 218 and permit the election of the complainant organization as a representative of the employes, and confer with and deal with it, the agreements made with the representatives chosen as described were valid and binding. Therefore the action of the defendants could under no circumstances be described as a conspiracy.

The charge of conspiracy is based upon the assumption that what defendants have done is unlawful. If this basis is removed the entire conspiracy theory collapses. As has been pointed out above, this Court has definitely ruled that the Transportation Act does not forbid the acts which defendants have done. Since appellants have failed to establish that the acts of defendants were unlawful there can be no unlawful conspiracy to commit them. This reasoning applies both to the contention that defendants are guilty of a common law

conspiracy and also to the contention that they have violated Section 19 of the Criminal Code, quoted at page 85 of Appellants' Brief. This was pointed out by the Circuit Court of Appeals at the conclusion of its opinion. (Record, page 498.)

The Acts of Defendants do not Violate Complainants' Civil and Statutory Rights, Neither do they Endanger and Oppress them in the Free Exercise of Such Rights.

Point III of appellants, set forth at page 88 of their Brief, is that the acts of defendants violate the complainants' civil and statutory rights and oppress them in the free exercise and enjoyment of such rights. This is also based on the assumption that the acts of defendants are unlawful and lacking this basis is without foundation, and is answered most convincingly by the Circuit Court of Appeals in that part of its opinion beginning at page 497, of the Record, as follows:—

> "We do not understand just what the complainants mean by their 'civil' rights. If they mean such as are accorded labor by general law,—the right lawfully to organize, *United Mine Workers* vs. *Coronado Coal Co.*, 259 U. S. 344, the right to bargain collectively, the right to strike,—no invasion of such rights is shown and, accordingly, none is here in question. Moreover, the complainants have expressly grounded their actions on the Transportation Act of 1920 and, limiting their grievance against the respondents to their refusal to observe its terms, they have asserted that the conduct of the respondents is in violation of rights granted them by that Act in declaring a national policy in respect to railroad labor disputes. Thus both the pleadings and the facts show that complainants stand on their statutory rights. To these alone we shall address discussion."

As Complainants Have Failed to Show any Violation of their Legal Rights they Cannot Recover the Pecuniary Losses and Other Damages Alleged to Have Been Sustained by Them.

The contention of the individual complainants is that they have sustained and are sustaining pecuniary losses and other damages by reason of defendants' unlawful acts for which they have no adequate remedy at law. As in the preceding points, this point is founded on the proposition that defendants' acts were unlawful. It having been indicated *supra*, that defendants' acts were not unlawful it follows that there was no violation of complainants' legal rights and therefore, even if they did, in fact, sustain pecuniary losses and other damages, they cannot recover therefor. But again in any case neither can those who voluntarily quit work recover wages they have not worked for, nor can those who voluntarily work for wages agreed upon and accepted by them recover on the basis of higher wages.

Complainants are not Proper Parties to Maintain this Suit.

Complainants' Bill avers, paragraph 1 (Record, page 5), "Pennsylvania Railroad System and Allied Lines Federation No. 90, hereinafter for convenience called 'System Federation No. 90,' is a voluntary unincorporated association of employees of the Pennsylvania Railroad Company." Paragraph 3 (Record, page 9) avers: "The action is of a civil nature and involves the duty of railroad companies and other carriers to confer in good faith with their employees through authorized representatives designated by the latter on all questions and disputes arising between them with respect to wages, rules and working conditions." Paragraph 4 (Record, page 11) avers that action of the Board may be taken on its own motion or may be invoked by the Chief Executive of the carrier, or an "organization of the employees." The Bill thereafter avers that at the time of the passage of the Transportation Act System Federation No. 90 was a generally

recognized organization of employees within the meaning and intent of the Act, and was authorized by such employees to represent them for all purposes thereof, and that up to and including the first part of the year 1921 the said organization continued to be an organization of employees of the Railroad Company. The Bill herein was filed on the second day of November, 1923. The Answer thereto, filed December 14, 1923, specifically averred that the complainants had no authority or legal power to file the Bill.

If under Sections 301 and 302 of Title III of the Transportation Act organizations of employees of a carrier may represent its employees in any dispute between the carrier and the employees, that right is limited to such organizations as are composed of employees of the carrier. At the time of the filing of the Bill and for more than a year prior thereto, to wit, since July 1st, 1922, at which time the employees, members of Federation No. 90, voluntarily left the service of the Railroad Company, the carrier, on a strike, it appears from the testimony of Newton P. Good that there were no employees of the Railroad Company members of that organization (Record, pages 154, 162, 163).

This testimony shows that the complainant Federation was not at the time of the filing of the Bill an organization of employees of the Railroad Company, and therefore it had no authority or power to file the Bill with reference to any dispute between employees of the carrier and the carrier under Title III of the Transportation Act, or otherwise, unless the Bill can be maintained as an action to recover an alleged balance due for wages to the employees, which is denied and is fully discussed elsewhere in this Brief.

Even if the Individual Complainants Have any Right of Action to Recover for Damages or Wages, their Remedy is by an Action at Law and not in Equity.

No authorities are cited by appellants to support their contention that they have no adequate remedy at law to recover for their alleged losses, and to overcome the

well settled rule of law that when the damages are definite and liquidated no equitable accounting will be allowed. The Circuit Court of Appeals for the Eighth Circuit discussed this question in the case of *Thomas* vs. *Council Bluffs Canning Co.*, 92 Fed. 422, saying at page 423:—

> "There is, indeed, a prayer for an accounting; but it is a futile prayer, for no accounting is necessary, and none could be had, because the amount which the Council Bluffs Company owes is written in the contract, and the amount which each stockholder is entitled to recover is measured by the number of shares of the original stock which he owns. The amount each stockholder is entitled to receive is not even an unliquidated amount."

All of the cases cited on pages 115 and 116 of Appellants' Brief as bearing out the right to recover wages in this action, are suits at law and not in equity.

On page 47 of Appellants' Brief the contention is made that the causes of action for damages are properly joined in the equitable suit for injunction because they flow directly from defendants' alleged unlawful acts and the main suit being in equity, the Court should pass upon all phases of the controversy and make a complete determination of the rights of the parties, including the award of money damages as an incidental relief, and also because an adjudication of the damage claims will prevent multiplicity of suits. In other words, the contention is made that equity will take jurisdiction over damage claims as incidental to the prayer for injunction, and also because by so doing it will avert a multiplicity of suits. It has already been shown that the allegations in the Bill and the proof in support thereof fail to establish any right to an injunction, and therefore, no jurisdiction over the damage claims could be assumed as incidental to an injunction. Nor can the jurisdiction be sustained, as asserted on page 47 of Appellants' Brief

on the ground of avoidance of a multiplicity of suits. *Equitable Life Assurance Society* vs. *Brown*, 213 U. S. 25; *Thomas* vs. *Council Bluffs Canning Co.*, 92 Fed. 422.

The appellees therefore submit:—

First.—That no ground is laid or established for an injunction against the defendants below upon the ground of conspiracy or upon any other ground.

Second.—That there is no basis for the charge of conspiracy.

Third.—That the complainant, System Federation No. 90, is not a representative of the employees of the defendant carrier, and may not therefore maintain this Bill.

Fourth.—That the individual complainants are not entitled to recover any damages, wages or balance of wages claimed by them.

And finally, that all the allegations of the complainants' Bill and all the relief prayed thereunder depend upon the validity and propriety of the election of the representatives of the employees with whom the rules and regulations in force were duly agreed upon, and therefore that the action of the Court below dismissing the Bill was correct and its order should be sustained.

JOHN HAMPTON BARNES,
For Appellees.

the Railroad Labor Board, rely only upon the moral sanction of public opinion and do not grant rights enforceable in a court of law, a carrier, in dealing with its employees concerning wages and working conditions, is not bound by rulings of the Board affirming the right of any craft or class to select a trade union as their representative, but may substitute an election whereby only individuals, chosen regionally, are elected and votes for a union are rejected; may refuse to allow furloughed employees to vote in the election, and may even threaten discharge of employees who do not consent to the agreement made with the representatives elected. P. 210.

2. These things, being within the legal rights of a railroad company, are not subject to be enjoined, at the suit of a union composed of existing and former employees, upon the ground that the company and its officers, in doing them, are guilty of a conspiracy both at common law and under § 19 of the Criminal Code. *Id.*

3. Denial of the prayer for equitable relief and dismissal of the main part of the bill carries with it incidental claims for damages, without prejudice to their prosecution at law by individual claimants. P. 218.

1 Fed. (2d) 171, affirmed.

APPEAL from a decree of the Circuit Court of Appeals which affirmed a decree of the District Court (296 Fed. 220) dismissing the bill in a suit brought by a union, composed of present and former workers of the Pennsylvania Railroad Company, to enjoin the corporation and its officers from carrying out an alleged conspiracy to defeat the provisions of the Railroad Labor Board legislation and to deprive the employees of rights under it. Damages also were prayed. The case is fully stated in the opinion.

Mr. Morris Hillquit and *Mr. David Wallerstein* for appellants.

Mr. John Hampton Barnes for appellees.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

The Pennsylvania Railroad System and Allied Lines Federation No. 90, by its bill in equity herein against the

Pennsylvania Company and its officers, continued the controversy which was considered in *Pennsylvania Railroad Company* v. *Labor Board,* 261 U. S. 72. The Company filed an answer, and the case was heard in the District Court for the Eastern District of Pennsylvania on exhibits and evidence. The District Court dismissed the bill, 296 Fed. 220, and the decree was affirmed in the Third Circuit Court of Appeals, 1 Fed. (2d) 171. The issues involve the construction and application of Title III of the Transportation Act of 1920, Ch. 91, 41 Stat. 456, 469. The Title provides a method for the settlement of disputes over wages, rules and working conditions between railroad companies engaged in interstate commerce and their employees, and, as a means of securing it, creates the Railroad Labor Board and defines its functions and powers.

The Pennsylvania Railroad System and Allied Lines Federation No. 90 is a trades union of 50,000 employees or more affiliated with the American Federation of Labor, and embracing those crafts which have to do with the mechanical part of railroad service. It contains as members only workers, or those who have been workers, in the employ of the Pennsylvania Company or its Allied Lines. Our statement of the case and the opinion in what we shall call the Labor Board case show the dealings between the Company and Federation No. 90 down to and beyond the time when the Transportation Act was passed and the railroad property was turned back by the Government to the Company. The Railroad Labor Board, April 14, 1921, decided that the *modus vivendi* under which rules and working conditions under the Railroad Administration had continued should end July 1, 1921, and called upon each carrier and its respective employees to designate representatives to confer and decide, so far as possible, respecting their future rules and working conditions and to keep the Board advised of the progress toward agreement. The Board accompanied their announcement,

known as Decision 119, with a statement of rules of decision which it intended to follow in consideration of the settlement of disputes under Title III. The two which are relevant here, as they were in the case cited, are as follows:

"5. The right of such lawful organization [i. e. trade unions] to act toward lawful objects through representatives of its own choice, whether employees of a particular carrier or otherwise, shall be agreed to by management."

"15. The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe, however upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice."

Officials of Federation No. 90 met the representatives of the Pennsylvania Railroad Company, in compliance with the request of the Board, in May, 1921. The Pennsylvania representatives refused to confer, on the ground that the Federation did not represent a majority of the employees of the system, and proposed to send out a form of ballot to their employees asking them to designate their representatives. The Federation officers objected, because the ballot made no provision, in accordance with principles 5 and 15, for the representation of employees by a trade union, but specified that they must be natural persons and such only as were employees of the Pennsylvania Company; and further because the Company required that the representatives of the employees should be selected regionally rather than from the craft in the whole system, in compliance with Principle No. 15. The result was that two ballots were sent out, one by the Company and the other by the Federation. These forms were both

found objectionable by the Board, which by its decision No. 218 ordered a new election for which rules were prescribed and a form of ballot specified on which labor organizations, as well as individuals, could be voted for as his representatives at the option of the employee. The Pennsylvania Company applied to the Board to vacate this decision, on the ground that there was no dispute before the Board of which by Title III of the Transportation Act the Board was given jurisdiction. After a rehearing the Board confirmed its original decision. The action of the Company in refusing to comply with the decision of the Board as to the manner of holding the elections led to a vote among the members of the Federation No. 90 as to whether they should strike against the Company because of such vote. There was an affirmative vote and some 20,000 struck. A bill was brought by the Pennsylvania Company to enjoin the Labor Board from hearing the controversy instituted by Federation No. 90 over the election of representatives who should act for the employees in the conferences proposed with the Company. It was first objected that the Federation No. 90 had no standing or capacity to invoke the hearing of the dispute because a labor union; second, that the controversy did not involve the kind of dispute of which the Board could take cognizance under the Act, because the question who should represent the employees as to grievances, rules and working conditions was not within the jurisdiction of the Labor Board to decide; and, third, the Board had no right to publish its opinion condemning the action of the Company as it proposed to do, because that only applied to final decisions of a dispute over wages or working conditions. The position of the Company was not sustained by this Court. It was held that a labor union could invoke the Board's action, that the question who should be recognized as representatives of the employees was not only before the Board but involved one of the most im-

portant of the rules and working conditions in the operation of a railroad, and that such a decision could therefore be made public if the Board deemed it wise and proper. The District Court in which the suit was brought had enjoined the Labor Board from hearing the dispute and from publishing its opinion. Notwithstanding the opinion of the Board, the Pennsylvania Company proceeded to carry out its original method of selecting employees' representatives and their regional distribution. It refused to allow its employees to vote for the Federation No. 90 as their representative, and where ballots were cast, as happened in some of the voting places, for the Federation No. 90 in a great majority, individuals, though they had but a small minority of votes, were declared elected as representatives by the Company. The Company's plan brought together in the organizations an equal number of officers and of employees' representatives, with the restriction that no action should be taken indicating agreement unless two-thirds of the body acting should concur. The Company paid the expenses of the organizations and such permanent officers as they had were put upon the pay roll of the Company. It instituted a trade organization with which the Company proposed to deal and has dealt, although the evidence conclusively showed that it did not, at the time of the election certainly, represent a majority of the employees. The Company and the employees whom it recognized as the representatives of its employees came to an agreement in respect to wages and working conditions and have induced many employees to sign such agreement. This agreement took effect as of July 1, 1921.

The bill in this case was filed to enjoin what was charged to be a conspiracy by the Pennsylvania Company and its officers to defeat the provisions of the Act and deprive the employees of their rights with which the provisions of Title III of the Act intended to vest them in their deal-

ings with the Company; averring that in the effort to deprive them of their proper representation and to maintain the plan of the Company, the Company resorted to coercion with threats of discharge, and further violated their rights by preventing a large number of employees who were furloughed from casting their vote in the elections.

The complainants further contend, first that all furloughed employees, who in July, 1921, were refused reëmployment in accordance with their seniority rights, should recover wages for the time the Company has denied them reëmployment at former wages; that employees who, having worked a year from July, 1921, to July, 1922, were discharged by the Company for refusing to waive their rights under the Transportation Act, were entitled to recover the difference between the rate paid and what they were entitled to under a wage decision of the Board in June, 1921; and, finally, that a large number of the Company's employees, members of Federation No. 90, who were not furloughed in 1921 and did not strike in the summer of 1922, but continued at work under the wages, rules and conditions established by the Company's alleged unlawful agreement, are entitled to be paid by the Company the difference between the amounts actually received by them and the amount they should have received at the rate of wages in force before the first of July, 1921. The contention is that complainants in this their representative suit and as incident to the main relief sought by injunction, may have an accounting of damages sustained by the members of the Federation No. 90 in the premises.

The prayer of the bill is for a decree enjoining the defendant, the Pennsylvania Company, from enforcing the provisions of the agreement with respect to wages and working conditions made as of July 1, 1921, between it and its employees under its plan on the vote taken, from en-

forcing any change in rules and working conditions as they existed on June 30, 1921, that is as they existed under a previous national agreement entered into while the property was under federal control, from continuing to deal with persons chosen on the Company's ballots as the representatives of the employees engaged in mechanical work, and from financing, interfering with, directing and controlling the organizations of the Company's employees for the purposes set forth in the Transportation Act, and from refusing to confer and deal with Federation No. 90 as the organization representing the great majority of the Company's employees engaged in such work.

The whole case for Federation No. 90 rests upon the contention that the conduct of the Company and its officers is a statutory offense in the nature of a conspiracy under the provisions of Section 19 of the Criminal Code, which provides that if two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the laws of the United States, they shall be punished; and further that injunction will lie to restrain the means for promoting such conspiracy. Moreover, it is claimed that this is a conspiracy at common law, because it is a combination to accomplish an unlawful result by unlawful means, and actionable. Citing *Pettibone* v. *United States*, 148 U. S. 197, and *Duplex* v. *Deering*, 254 U. S. 465. The whole issue, therefore, is whether the provisions of Title III, in pointing out what Congress wished the parties to the dispute to do, was intended by Congress to be a positive, obligatory law, creating an enforceable duty such that a combination by the Company and its officials to violate it is a conspiracy. Title III we have already construed in the *Labor Board Case* in 261 U. S. 72. We quote from the statement in that case:

"Title III of the Transportation Act of 1920 bears the heading 'Disputes Between Carriers and their Employees and Subordinate Officials'.

"Section 301 makes it the duty of carriers, their officers, employees and subordinate officials, to exert every reasonable effort to avoid interruption to the operation of an interstate commerce carrier due to a dispute between the carrier and its employees, and further provides that such disputes shall be considered and if possible decided 'in conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute'.

"The section concludes—

"'If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board which under the provisions this title is authorized to hear and decide such dispute'.

"Section 302 provides for the establishment of railroad boards of adjustment by agreement between any carrier, groups of carriers, or the carriers as a whole, and any employees or subordinate officials of carriers, or organization or group of organizations thereof. No such boards of adjustment were established when this controversy arose.

"Section 303 provides for hearing and decision by such boards of adjustment upon petition of any dispute involving only grievances, rules or working conditions not decided as provided in Sec. 301.

"Sections 304, 305 and 306 provide for the appointment and organization of the 'Railroad Labor Board' composed of nine members, three from the Labor Group, three from the Carrier Group, and three from the Public Group.

"Section 307(a) provides that when a labor adjustment board under Sec. 303 has not reached a decision of a dispute involving grievances, rules or working conditions in a reasonable time, or when the appropriate adjustment board has not been organized under Sec. 302, the Railroad Labor Board '(1) upon the application of the chief execu-

tive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules or working conditions which is not decided as provided in section 301'.

"Paragraph (b) of the same section provides for a hearing and decision of disputes over wages.

"Paragraph (c) makes necessary to a decision of the Board the concurrence of five members, of whom, in the case of wage disputes, a member of the Public Group must be one. The paragraph further provides that

"'All decisions of the Labor Board shall be entered upon the records of the board and copies thereof, together with such statement of facts bearing thereon as the board may deem proper, shall be immediately communicated to the parties to the dispute, the President, each Adjustment Board and the [Interstate Commerce] Commission, and shall be given further publicity in such manner as the Labor Board may determine.'

"Paragraph (d) requires that decisions of the Board shall establish standards of working conditions which in the opinion of the Board are just and reasonable.

"Section 308 prescribes other duties and powers of the Labor Board, among which is that of making 'regulations necessary for the efficient execution of the functions vested in it by this title'.

"Section 309 prescribes that

"'Any party to any dispute to be considered by an Adjustment Board or by the Labor Board shall be entitled to a hearing either in person or by counsel'.

"Section 313 is as follows:

"'The Labor Board, in case it has reason to believe that any decision of the Labor Board or of an Adjustment Board is violated by any carrier, or employee or subordinate official, or organization thereof, may upon its own motion after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.'"

This Court's construction of the effect of these provisions is shown in the opening language of the opinion, as follows:

(Page 79.) "It is evident from a review of Title III of the Transportation Act of 1920 that Congress deems it of the highest public interest to prevent the interruption of interstate commerce by labor disputes and strikes, and that its plan is to encourage settlement without strikes, first, by conference between the parties; failing that, by reference to adjustment boards of the parties' own choosing, and if this is ineffective, by a full hearing before a National Board appointed by the President, upon which are an equal number of representatives of the Carrier Group, the Labor Group, and the Public. The decisions of the Labor Board are not to be enforced by process. The only sanction of its decision is to be the force of public opinion invoked by the fairness of a full hearing, the intrinsic justice of the conclusion, strengthened by the official prestige of the Board, and the full publication of the violation of such decision by any party to the proceeding. The evident thought of Congress in these provisions is that the economic interest of every member of the Public in the undisturbed flow of interstate commerce and the acute inconvenience to which all must be subjected by an interruption caused by a serious and widespread labor dispute, fastens public attention closely on all the circumstances of the controversy and arouses

PENNSYLVANIA RAILROAD SYSTEM AND ALLIED LINES FEDERATION NO. 90, ET AL. v. PENNSYLVANIA RAILROAD COMPANY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 661. Argued January 13, 1925.—Decided March 2, 1925.

1. Since, as decided in *Pennsylvania Railroad Co.* v. *Labor Board*, 261 U. S. 72, the provisions of Title III of the Transportation Act, 1920, seeking to promote adjustment of disputes between carriers and their employees through conferences and through decisions of

public criticism of the side thought to be at fault. The function of the Labor Board is to direct that public criticism against the party who, it thinks, justly deserves it."

Another passage is as follows:

(Page 83.) "The second objection is that the Labor Board in Decision 119 and Principles 5 and 15, and in Decision 218, compels the Railroad Company to recognize labor unions as factors in the conduct of its business. The counsel for the Company insist that the right to deal with individual representatives of its employees as to rules and working conditions is an inherent right which can not be constitutionally taken from it. The employees, or at least those who are members of the labor unions, contend that they have a lawful right to select their own representatives, and that it is not within the right of the Company to restrict them in their selection to employees of the Company or to forbid selection of officers of their labor unions qualified to deal with and protect their interests. This statute certainly does not deprive either side of the rights claimed.

"But Title III was not enacted to provide a tribunal to determine what were the legal rights and obligations of railway employers and employees or to enforce or protect them. Courts can do that. The Labor Board was created to decide how the parties ought to exercise their legal rights so as to enable them to coöperate in running the railroad. It was to reach a fair compromise between the parties without regard to the legal rights upon which each side might insist in a court of law. The Board is to act as a Board of Arbitration. It is to give expression to its view of the moral obligation of each side as members of society to agree upon a basis for coöperation in the work of running the railroad in the public interest. The only limitation upon the Board's decisions is that they should establish a standard of conditions, which,

in its opinion, is just and reasonable. The jurisdiction of the Board to direct the parties to do what it deems they should do is not to be limited by their constitutional or legal right to refuse to do it. Under the act there is no constraint upon them to do what the Board decides they should do except the moral constraint, already mentioned, of publication of its decision."

A third passage is as follows:

(Page 85.) " It is not for this or any other court to pass upon the correctness of the conclusion of the Labor Board if it keeps within the jurisdiction thus assigned to it by the statute. The statute does not require the Railway Company to recognize or to deal with, or confer with labor unions. It does not require employees to deal with their employers through their fellow employees. But we think it does vest the Labor Board with power to decide how such representatives ought to be chosen with a view to securing a satisfactory coöperation and leaves it to the two sides to accept or reject the decision. The statute provides the machinery for conferences, the hearings, the decisions and the moral sanction. The Labor Board must comply with the requirements of the statute; but having thus complied, it is not in its reasonings and conclusions limited as a court is limited to a consideration of the legal rights of the parties."

It is clear from this language that in the *Labor Board Case* this Court has decided that there is nothing compulsory in the provisions of the statute as against either the Company or the employees upon the basis of which either acquired additional rights against the other which can be enforced in a court of law. The language of the Title is a legal definition of the jurisdiction and duty of the Railroad Labor Board in attempting to settle the controversies between the railroad employer and its employees, and where the Labor Board exceeds its jurisdiction and violates the provisions describing its functions, it

may be subject to judicial restraint at the complaint of any properly interested party. The so-called mandatory language of Section 301 might, if that section were accompanied by a penalty for its violation or some other means of compulsion, and there were not the other provisions of the Title to help its construction, be given the force of a statutory obligation of the parties to a dispute. There are two Sections, 310 and 311, in this Title, which do furnish instances of judicial compulsion in the matter of securing evidence and the production of records to promote the efficient administration of the functions vested in the Labor Board by the Title. And there is Section 312 which required that carriers until September 1, 1920, should continue to pay wages not less than those paid March 1, 1920, and fixed a penalty for each violation of this obligation and gave a right to the United States to a civil suit to recover the penalty. But when the other sections of the Title are taken as a whole, they may be searched through in vain to find any indication in the mind of Congress or any intimation that the disputants in the controversies to be anticipated were in any way to be forced into compliance with the statute or with the judgments pronounced by the Labor Board, except through the effect of adverse public opinion.

What the complainants here are seeking to do is to enforce by mandatory injunction a compliance with a decision of the Board, not based on the legal rights of the parties, but on its judgment as to what legal rights the disputants should surrender or abate in the public interest and in the interest of each other, to maintain harmonious relations between them necessary to the continuance of interstate commerce, and to avoid severing those relations as they would have the strict legal right to do. Such a remedy by injunction in a court, it was not the intention of Congress to provide.

The ultimate decision of the Board, it is conceded, is not compulsory, and no process is furnished to enforce it,

but it is urged that the preliminary steps are not the final decision, and it will make the Act meaningless and wholly ineffective if under the Act the parties may not be forced to a conference and to a contest before the Labor Board. This very point was considered by us in the *Labor Board Case* and we held that the questions how the representatives of each side should be selected and whom the Board should recognize as accredited representatives were of primary importance affecting the working conditions of the railroad, and such decisions, therefore, must be regarded, although preliminary, as of the same class of decisions as those with respect to wages and ultimate working conditions. The same sanction, therefore, of publication and public opinion, exists for them and nothing else.

The Pennsylvania Company is using every endeavor to avoid compliance with the judgment and principles of the Labor Board as to the proper method of securing representatives of the whole body of its employees, it is seeking to control its employees by agreements free from the influence of an independent trade union, it is, so far as its dealings with its employees go, refusing to comply with the decisions of the Labor Board and is thus defeating the purpose of Congress. Appellants charge that the Company is attempting, by threats to discharge its employees, to secure their consent to the agreement of July 1, 1921, as to wages and working conditions agreed to by the representatives of its employees it declared elected. This is denied, though there is some evidence tending to support the charge. All these things it might do and remain within its strict legal rights after it came fully into control of its railroad property subsequent to September 1, 1920. We do not think Congress, while it would deprecate such action, intended to make it criminal or legally actionable. Therefore, the bill of complaint does not aver a conspiracy and without that, equitable relief can not be granted.

We come now to the prayer for an allowance of damages to Federation No. 90, suing on behalf of its members. The claims are, first, for certain employees who, being on furlough when they were notified to return to work on a scale of wages made effective by the Company July 1, 1921, refused to return except on the old scale prevailing September 1, 1920. They seek wages on the old scale though they did not work. Second, for certain employees who worked under this Company scale for a year and then struck. They seek a recovery for the difference between the old and the new scale established by the Company. Third, for certain employees who did not strike at all and accepted wages at the new scale till the filing of the bill. They seek recovery for the difference between the old scale and the new scale which they accepted.

It is argued that the new scale was illegal because not fixed by the Labor Board under Title III after a hearing and therefore the only legal scale was that which prevailed before. We do not find it necessary to consider these claims on their merits. Even if the Federation No. 90 and its members as representatives in a class suit in equity could recover such claims as damages incidental to granting the main equitable relief prayed for, the denial of the prayer for the equitable relief and the dismissal of the main part of the bill carries with it such incidental claims without prejudice to their prosecution at law by individual claimants as they may be advised. Our conclusions on the merits of the main issue and the damage claims have made it unnecessary for us to consider objections made to the representative capacity of the complainants to maintain the bill.

Decree affirmed.